Feb 7 & 8 Argued — Field absent
Feb. 17. Postponed to next Saturday
Feb 24 not take up
Mar. 2 [illegible] Clifford

1123

SUPREME COURT OF THE UNITED STATES.

No. 341.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,
PLAINTIFF,

vs.

MAUNSELL B. FIELD.

ON A CERTIFICATE OF A DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

Act '64, 13 U. S. S. 241 — 239 §44 Secy may refund or pay back [illegible]
Act '33 4 " 632 §2 [illegible] where other provision is made by law

1 Supreme Court of the United States.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK
agst.
MAUNSELL B. FIELD.

On a certificate of division between the judges of the circuit court of the U. S. for the southern district of New York.—Nov. term, 1865.

UNITED STATES OF AMERICA,
Southern district of New York:

At a circuit court of the United States for the second circuit, begun and holden at New York, on the day of , A. D. 1865, before the honorable Samuel Nelson, associate justice, and the honorable Chas. L. Benedict, district judge.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK
vs.
MAUNSELL B. FIELD.

This is an action brought against the defendant, who is collector of
internal revenue in and for the sixth collection district of the
2 State of New York, to restrain the collection of certain taxes
and penalties claimed by him to be due to the United States from
the pl'ff. under and by virtue of the acts of Congress passed June 30th, 1864, entitled An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes, and the act amending the same, approved Mar. 3d, 1865.

The facts proved or admitted are, that the plaintiff was incorporated by special act of the legislature of the State of New York, passed March 26, 1819, entitled "An act to incorporate an association by the name of a Bank for Savings in the City of New York," and has from that time done business in the city of New York under the said act and the acts entitled as follows, to wit: "An act concerning The Bank for Savings in the City of New York," passed March 24, 1820; "An act relative to The Savings Bank in the City of New York," passed March 29, 1827; "An act for the relief of The Bank for Savings in the City of New York," passed April 23, 1831; "An act in relation to The Bank for Savings in the City of New York," passed April 23, 1836; "An act in relation to deposits by banks for savings," passed December 15, 1847. Copies of said charter and several acts are hereto annexed.

3 The said corporation has no capital stock and no sharehold-
ers; and has performed and transacted the business and rendered the services mentioned in the preamble to the charter, and in the manner prescribed by the said charter and the said several acts of the legislature.

That on receiving money for the purposes mentioned in its charter, the same is entered in a pass-book furnished to the depositor, and retained by him or her, and the said money or any part thereof, or the accumulations and profits thereof, can only be obtained at four

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3 The said corporation has no capital stock and no shareholders; and has performed and transacted the business and rendered the services mentioned in the preamble to the charter, and in the manner prescribed by the said charter and the said several acts of the legislature.

That on receiving money for the purposes mentioned in its charter, the same is entered in a pass-book furnished to the depositor, and retained by him or her, and the said money or any part thereof, or the accumulations and profits thereof, can only be obtained at four stated periods in the year, and upon giving a week's notice of the intended call; and then upon the presentation of the pass-book, that the payment may be entered therein. In case of a loss or accidental destruction of the pass-book, money can be paid as upon a production of the pass-book, upon the presentation of certain proofs prescribed by the by-laws of the corporation. All payments are made in accordance with the provisions of the by-laws, sections 3, 4, 6, 7, 8 and 9 of chapter 4, copies of which are hereto annexed.

The moneys received by the said corporation under their said charter
and the said acts are, and at all times have been, with the exception
of a small sum kept on deposit in one of the city banks for current
expenses, or waiting an opportunity to invest, either actually
4 invested in some one of the stocks authorized by the said acts
of the legislature, or loaned on bonds secured by mortgage on
real property in the city of New York. All the profits of the said corporation are divided ratably among the depositors semi-annually, after deducting the necessary expenses authorized by the charter and the percentage allowed by law to be accumulated, "to the end that, in case of a reduction in the market price of the securities or public stocks held by the said corporation below the par value thereof, any loss to the depositors by reason of such reduction may be prevented or made good;" such percentage is invested as the other funds of the corporation are invested as aforesaid.

No depositor is allowed to have deposits amounting in the aggregate to more than $1,000, except in rare and special cases, in which it is made to appear that the depositor can find no other investment or safe deposit for his earnings. A large portion of the depositors
have incomes much less in amount than $600 per annum.

5 It appeared also that the pl'ff had neglected and refused to
make any returns to the Commissioner of Internal Revenue, or
the assessor of the district, of the average amount of the deposits for the month of April, May, June, July and August, or any returns, and that the assessor has estimated the amount and certified the same to the Commissioner, who directed the defendant to proceed to the collection of the tax due on the amount estimated, together with certain penalties, which certificate of the assessor and letter of direction from the Commissioner are annexed hereto.

Prior to the commencement of this action the defendant served on the pl'ff a notice, a copy of which is annexed hereto.

The case coming on to be tried, the following questions occurred, upon each of which the opinion of the judges were divided.

1\. Whether the circuit court can restrain the collection of the said tax and penalties by injunction.

2\. Whether an injunction can properly issue in this case.

6 3. Whether the plaintiff is, under the 110th section of the act
of June 30, 1864, as amended by the act of Mar. 3, 1865, liable
to pay a duty of one twenty-fourth of one per cent. per month on the average amount of money so received and invested or loaned as aforesaid, and represented and entered in the pass-book as aforesaid, and

payable to the parties entitled under and in pursuance of the 3d, 4th, 6th, 7th, 8th and 9th of the by-laws of the pl'ff.

4. Whether moneys so received and invested are deposits within the meaning of the act of Congress aforesaid.

5. Whether moneys received on deposit in any one month, and invested as aforesaid during the same month, are deposits within the meaning of said acts, so as to render the pl'ff liable to pay a tax thereon for such month.

Whereupon, on motion of the defendant's counsel that the facts on which the disagreement had happened may be stated, under the direction of the judges and certified under the seal of the court, to the Supreme Court, to be finally decided, It is ordered that the foregoing statement of facts, which is made under the direction of 7 the judges, be certified according to the request of said counsel and to the law in such case made and provided.

8 An act to incorporate an association by the name of a Bank for Savings in the city of New York.—Passed March 26, 1819.

Whereas the Society for the Prevention of Pauperism in the city of New York have petitioned the legislature for an act of incorporation, for the laudable purpose of encouraging in the community habits of industry and economy, by receiving and vesting in government securities or stock created and issued under and by virtue of any law of the United States, or of this State, and in no other way, such small sums of money as may be saved from the earnings of tradesmen, mechanics, laborers, minors, servants, and others, thereby affording the two-fold advantage of security and interest; and the legislature considering it their duty to cherish all laudable attemps to meliorate the condition of the poor and laboring class of the community, Therefore—

1. *Be it enacted by the people of the State of New York represented in senate and assembly*, That William Bayard, John Murray, junior, Noah Brown, William Few, Brockholst Livingston, Cadwallader D. Colden, George Arcularius, Thomas Buckley, Duncan P. Campbell, Benjamin Clark, James Eastburn, Henry Eckford, Thomas Eddy, Philip Hone, John E. Hyde, Peter A. Jay, Zachariah Lewis, Denis McCarthy, Andrew Morris, James Palmer, John Pintard, Abraham Russell, Jacob Sherred, Joseph Smith, Najah Taylor, Jeremiah Thompson, William Wilson, and Samuel Wood, shall be, and are hereby, constituted a body corporate and politic, by the name of "The Bank for Savings in the city of New York;" and by that name they shall have perpetual succession, and shall be persons capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever; and may have a common seal, with power to change and alter the same from time to time, and shall be capable of purchasing, taking, holding, and enjoying, to them and their successors, any real estate, in fee-simple or otherwise; and any goods, chattels, and personal estate, which shall be necessary for the pur-

poses above recited, and of selling, leasing, or otherwise disposing of the said real and personal estate, or any part thereof, at their
9 will and pleasure: *Provided, always,* That the clear annual value of such real and personal estate, exclusive of the profits that may arise from the interest accruing upon the stock, or from the sale of any stock in which the deposits made in the said bank may be invested, shall not exceed the sum of five thousand dollars; and that the trustees or managers of said institution shall not, directly or indirectly, receive any pay or emolument for their services, nor shall they issue any notes, make any discounts, or transact any business which belongs to or is transacted by incorporated banks other than is herein specified: *Provided, also,* That the funds of the said corporation shall be used and appropriated to the promotion of the objects stated in the preamble to this act, in the manner herein mentioned, and those only.

2. *And be it further enacted,* That the said association, so incorporated, shall receive as deposits, from persons of the description contained in the recital to this act, all sums of money that may be offered for that purpose, in such sums and on such terms, for the purpose of being invested as aforesaid; which shall be invested accordingly, and shall be repaid to each depositor when required, and at such times, and with such interest, and under such regulations as the board of trustees, to be appointed as is hereafter mentioned, shall from time to time prescribe; which regulations shall be put up in some public and conspicuous place in the room where the business of the said corporation shall be transacted, but shall not be altered so as to affect any one who may have been a depositor previous to such alteration. No president, vice president, trustee, or accountant shall directly or indirectly borrow or use the funds of the corporation, except to pay necessary current expenses; and all certificates or evidences of deposit made by the proper officer shall be as binding on the corporation as if it were under their common seal. And the said corporation shall from time to time have power to make, constitute, ordain, and establish such by-laws and regulations as they shall judge proper, for the election of their officers, for prescribing their respective functions, and the mode of discharging the same, for regulating the times and places of meeting of the officers and trustees, and for the transacting, managing, and directing the affairs of the institution. *Provided,* Such by-laws and regulations are not repugnant to this act, to the constitution and laws of this State, or of the United States. *Provided, further,* That it shall be the duty of the trustees of the said bank to regulate the rate of interest to be allowed to the depositors, so that they shall receive a ratable proportion of all the profits of the said bank, after deducting therefrom all necessary expenses authorized by this act to be incurred.

3. *And be it further enacted,* That the officers of the said institution shall consist of a president and three vice presidents, who, together with twenty-four trustees, shall constitute a board of managers, five of whom, provided the president or one of the vice presidents be

present, assembling at the time and place designated for that
10 purpose by any by-laws or regulations of the institution, shall constitute a legal meeting thereof.

4. *And be it further enacted,* That William Bayard shall be president, John Murray, junior, first vice president; Noah Brown, second vice president, and William Few, third vice president; Brockholst Livingston, Cadwallader D. Colden, George Arcularius, Thomas Bulkley, Duncan P. Campbell, Francis Cooper, James Eastburn, Henry Eckford, Thomas Eddy, Philip Hone, John E. Hyde, Peter A. Jay, Zachariah Lewis, Dennis McCarthy, Andrew Morris, James Palmer, John Pintard, Abraham Russell, Jacob Sherred, Joseph Smith, Najah Taylor, Jeremiah Thompson, William Wilson, and Samuel Wood be the first trustees, who shall constitute the first board of managers of said institution; and in case of a vacancy, by death, resignation, or otherwise, among the said officers and trustees, such vacancy shall be filled up by ballot by the board of managers at their first regular meeting thereafter, and the person having the majority of the whole number present and voting shall be considered as duly elected, and not otherwise; and the said board shall from time to time appoint a fit person as an accountant to the institution, removable at pleasure, who shall give such reasonable security for his fidelity and good conduct as the board of managers may from time to time require; and they may, if necessary, appoint a clerk to assist him.

5. *And be it further enacted,* That the board of trustees shall have power to appoint a clerk or clerks, and such other officers and servants as they may deem necessary for conducting the affairs of the institution, and to remove them at their pleasure, and to appoint others in their places, and to fix the salaries of such clerks or other officers so appointed.

6. *And be it further enacted,* That it shall be the duty of this corporation to make an annual report to the legislature, and to the common council of the city of New York, of the state of their funds.

7. *And be it further enacted,* That this act is hereby declared to be a public act, and that the same shall be construed in all courts and places favorably and benignly for every beneficial purpose therein intended; and that no misnomer of the said corporation in any deed-gift, grant, or demise, or other instrument of contract or conveyance, shall vitiate or defeat the same: *Provided,* The corporation shall be sufficiently described to ascertain the intention of the parties. *And provided, also,* That the legislature may, at any time hereafter, amend or repeal this act and dissolve the said corporation, or vary or modify its powers, as to them shall seem fit and proper.

11 *Laws relating to savings banks.*

An act concerning the Bank for Savings in the city of New York.—
Passed March 24th, 1820.

1. *Be it enacted by the people of the State of New York represented in senate and assembly,* That it shall and may be lawful for the corporation called the Bank for Savings, in the city of New York, to vest moneys which they have received or shall receive in the manner and

for the purposes mentioned in the act incorporating the said bank, in such government securities and stock as is mentioned in the last aforesaid act, and also to loan the said moneys to the corporation of the city of New York, at a rate of interest not less than six per centum per annum.

2. *And be it further enacted,* That it shall be lawful for the said corporation, at their discretion, to pay to any depositor, being a minor, such sums as may be due to such depositor, not exceeding two hundred and fifty dollars, notwithstanding that no guardian shall have been appointed for such depositor, and that the receipt or acquittance of such minor shall be as valid as if the same were executed by
a guardian of such minor duly appointed: *Provided*, such de-
12 posit shall have been personally made by such depositor, and
not by any other person for his or her benefit.

3. *And be it further enacted,* That the books of the said corporation shall at all times be open to the comptroller of this State, and to such other person or persons as the legislature may from time to time delegate, for inspection and examination.

An act relative to the Savings Bank in the city of New York.—Passed March 29th, 1827.

Be it enacted by the people of the State of New York represented in senate and assembly, That it shall and may be lawful for the corporation called the Bank for Savings, in the city of New York, to vest moneys which they have received or shall receive, in the manner and for the purposes mentioned in the act incorporating the said corporation, in any stock for the redemption or payment of which the faith of this State shall be pledged, or in any public stock which hath been or shall be created and issued under and by virtue of any law of the State of Ohio, or in stock which hath been or shall be created and
issued by the mayor, aldermen, and commonalty of the city
13 of New York; and also to loan money to the said mayor, alder-
men, and commonalty at such rate of interest, not exceeding
lawful interest, as shall be agreed upon between them.

An act for the relief of the Bank for Savings in the city of New York.—Passed March 29th, 1830.

The people of the State of New York represented in senate and assembly do enact as follows: 1. It shall be lawful for the corporation called "The Bank for Savings in the city of New York," in addition to the powers granted by the act of incorporation, to vest moneys which they have received or shall receive in any stock or securities for the redemption or payment of which the faith of any State in the Union shall be pledged, or in the bonds of the corporation of the city of New York; and also to loan any money to the public school society of New York, on satisfactory real security; and also to make temporary deposits in any of the incorporated banks in the said city, and to receive interest thereon at such rates, not exceeding that allowed by law, as may be agreed upon.

2. The accountant of said bank, for the time being, is hereby authorized to administer oaths in all such cases where it may be
14 necessary to carry into effect the true intent and object for which the institution was incorporated and where such oaths shall be directed to be administered by the by-laws of the corporation.

An act concerning the Bank for Savings in the city of New York.—Passed April 23, 1831.

The people of the State of New York represented in senate and assembly do enact as follows: 1. The board of trustees of the Bank for Savings in the city of New York are hereby authorized to accumulate gradually, and hold invested, a surplus fund, not exceeding three per cent. on the amount of deposits, to the end that in case of a reduction in the market price of the public stocks and securities held or to be held by the said bank, below the par value thereof, any loss to the depositors by reason of such reduction may be prevented or made good by means of the said fund.

2. The said board of trustees may from time to time regulate the interest to be allowed to depositors so that the interest allowed to depositors having five hundred dollars or more deposited with the said bank shall be at least one per cent. less than the interest
15 allowed to others, and so that no interest or dividend on account of the said surplus fund shall be allowed for moneys which shall have been withdrawn from the bank.

An act in relation to the Bank for Savings in the city of New York. Passed April 23, 1836.

The people of the State of New York represented in senate and assembly do enact as follows: 1. It shall be lawful for the corporation styled "The Bank for Savings in the city of New York," in addition to the powers heretofore granted, to loan any money which they have received or shall hereafter receive, upon bonds secured by mortgages upon unincumbered real estate situate in the city of New York, worth at least fifty per cent. more than the sum loaned.

2. The board of trustees of the said savings bank are hereby authorized to accumulate gradually and hold invested a surplus fund not exceeding ten per cent. on the amount of deposits, to the end that in case of a reduction in the market price of the securities or public stocks held or to be held by the said bank, below the par value thereof, any loss to the depositors by reason of such re-
16 duction may be prevented or made good by means of said fund.

3. Instead of publishing a statement of the depositors of said bank, as is required by the act entitled "An act relative to unclaimed bank dividends and deposits, passed May 9, 1835." the said bank shall report the statement by said act required, to be made to the comptroller of the State before the first day of January every fifth year, without designating the occupation and place of residence of the depositors. The first report of said bank shall be made before

the first day of January, one thousand eight hundred and thirty-eight.

4. The bank commissioners shall have power to visit and inspect the said savings bank whenever they may deem it necessary, or upon the requisition of the comptroller, and shall report to the legislature its general condition not less than once in every three years after the passage of this act.

5. No person shall make any deposit, or have any interest in any deposits made at different times in said bank, to a larger amount than the sum of five thousand dollars, and no trustee or officer of said bank shall make or have any interest in any of the deposits of the said bank, or the profits arising from the same, except it may be for deposits made by them as trustees for the benefit of others.

17 An act in relation to deposits by banks for savings.—Passed December 15, 1847.

The people of the State of New York represented in senate and assembly do enact as follows: §1. It shall be lawful for the trustees of banks for savings, who are authorized to make temporary deposits in any of the incorporated banks, to make such deposits with any of the associations which are now or may hereafter be formed under the general banking law.

§2. This act shall take effect immediately.

18 *Bank for Savings.—By-laws, chap.* 4.

OF THE BUSINESS OF THE BANK.

1. The bank shall be open for the paying and receiving of moneys to and from depositors every day (except Sundays and holidays allowed by usage or appointed by authority) from 10 a. m. to 2 p. m., and on Wednesdays and Saturdays from 4 to 6 o'clock in the afternoon besides. No money shall be received or paid under any circumstances, otherwise than at the hours above mentioned. The accountant and clerks will attend at the bank every day from 9 o'clock a. m. to 4 o'clock p. m., for receiving and writing up pass-books, for giving information to depositors, and for attending to any other business of the bank; excepting that on Wednesdays and Saturdays the bank will be closed from 2 o'clock to 4 o'clock p. m. All pass-books shall be written up at the time of being presented for the purpose.

2. Deposits of one dollar, or any number of dollars, may be received, but are not, in the whole, to exceed one thousand dollars from any depositor without the special direction of the attending committee, who shall report in his minutes the instance and the occasion.

3. On making the first deposit the depositor shall be present and subscribe his or her name in the book of the bank, as his or her agreement to these regulations "of the business of the bank,"

19 a copy of which shall be printed on the pass-book, without which no deposit will be received under any pretence whatever.

4. All deposits and all payments shall be entered at the time they are made in the books of the bank, and also in the pass-book of the depositor, who shall then examine the same. The pass-book shall be the voucher of the depositor, and the possession of the pass-book shall be sufficient authority to the bank to warrant any payment made and entered in it; and the bank shall not be liable or called on to make any payment without the presenting of the pass-book at its counter, that the proper entry may be made in it.

5. All deposits must be made in gold or silver coin, or in bills taken on deposit in the banks of the city, at the option of the depositors; and payments shall be made in the like manner at the option of the bank. No check shall be received on deposit.

6. The bank shall be at liberty to return all or any part of any deposit whenever they may think proper.

7. All drafts must be made personally or by order in writing, duly authenticated when the signature is not known to the accountant or attending committee, and must be accompanied by the pass-book.

8. The bank shall not be liable to pay any moneys to depositors except on a week's previous notice to the accountant or attending committee at the bank, nor except on the third Mondays in January, April, July, and October; but moneys may be voluntarily paid by the bank daily and without such notice, and without thereby waiving the right of the bank to such notice and time of payment.

9. No draft shall be made for less than one dollar nor for fractional parts of a dollar, unless it be for the whole amount remaining on deposit, or for interest only.

20 10. All notices in relation to the deposits or depositors published by order of the board in one or more of the daily newspapers of the city of New York six days successively, shall be taken and held actual notice to each depositor.

11. All accounts on which no deposit nor draft shall have been made for twenty years shall cease to be entitled to any further interest after twenty years from the last deposit or draft.

12. Although the bank will endeavor to prevent frauds on its depositors, yet all payments to persons producing the pass-books issued by the bank shall be valid payments to discharge the bank. In the case of lost books the bank will decide as to the person to whom payment shall be made, and without the right of the depositor in such lost book to question the correctness of the payment.

13. On the death of any depositor the amount to the credit of the deceased shall be paid to his or her legal representative.

14. No person shall be entitled to make any claim on the bank upon any contract or act by any officer, agent, or servant of the bank, not in conformity with these by-laws.

15. Interest will be allowed at such rate as, in the judgment of the board of managers, the business of the bank for the last six months will justify, to be declared before the third Mondays of January and

July. It will be allowed as follows: On all sums on deposit for six months prior to January 1 and July 1, six months' interest, and no more; on other sums on deposit for three months or more prior to either of those days, three months' interest, and no more. No interest will be allowed on sums drawn between those days, nor on sums less than five dollars, nor on fractional parts of a dollar. The interest will be credited as principal as of the first of January and July, and paid on or after the third Mondays of those months.

21 16. No trust account, or accounts in the name of more than one person, shall be hereafter opened, except that accounts may be opened in the joint names of husband and wife, and that deposits may be received and accounts opened in the name of a parent, grand-parent, or legally appointed guardian, in trust for an infant under the age of twelve years. In all cases deposits by one in trust for another shall be payable, at the option of the bank, to either. Deposits of minors may be made by them for the first time, personally; and accounts may be opened with minors and married women in their own names.

17. The transferring of accounts from one depositor to another, or from one book to another, is prohibited, except during the regular hours of business, and then only when the attending committee may think it advisable to permit such transfers in special cases pointed out by the accountant.

January 14, 1863.

22 U. S. Assessor's Office,
6th District of New York, New York City, September 25, 1865.

Hon. William Orton, Commissioner of Internal Revenue, Washington:

Sir: The corporation known as "The Bank for Savings in the City of New York," of which Marshall S. Bidwell is president, James F. De Peyster, treasurer, James De Peyster Ogden, comptroller, and Robert Lennox Kennedy, secretary, has, as I verily , by the action of its board of trustees and its officers above named, neglected and refused to make return of the "average amount of the deposits of money subject to payment," &c., and liable to tax under section 110 of the act of Congress entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," approved June 30th, 1864, and the act amendatory thereto, approved March 3d, 1865: Now, therefore, in accordance with the provisions of section 28 of said act, as amended March 3d, 1865, as aforesaid, I do hereby certify that, from the best information I have been able to obtain, and which information I believe to be 23 substantially correct, the average amount of deposits held by said bank and "subject to payment by check or draft, or represented by certificates of deposit or otherwise," during each month, from April, eighteen hundred and sixty-five, to August, eighteen hundred and sixty-five, both months inclusive, and the tax due thereon, to be as follows:

On the average amount of deposit so held during the month of April, 1865, $12,674,496; less amount invested in U. S. stocks and bonds, $4,515,500—$8,158,996, at $\frac{1}{24}$ per cent	$3,399 58
On the average amount of deposit so held during the month of May, 1865, $12,774,496; less amount invested in U. S. stocks and bonds, $4,515,500—$8,258,996, at $\frac{1}{24}$	3,441 24
On the average amount of deposit or held during the month of June, 1865, $12,985,446; less amount invested in U. S. bonds and stocks, $4,515,500—$8,409,946, at $\frac{1}{24}$	3,529 15
On the average amount of deposit or held during the month of July, 1865, $12,835,446; less amount in- 24 vested in U. S. stocks and bonds, $4,515,500—$8,319,946, at $\frac{1}{24}$	3,466 64
On the average amount of deposit so held during the month of August, 1865, $12,820,446; less amount invested in U. S. stocks and bonds, $4,515,500—$8,304,946, at $\frac{1}{24}$	3,460 39
	17,297 00

All of which is respectfully submitted, subject to such additions, penalties, and costs as in your judgment ought to be added.

(Signed) J. F. CLEVELAND, *Assessor.*

25 Office of Internal Revenue,
Treasury Department, Washington, October 13, 1865.

To the collector of internal revenue for the sixth collection district of the State of New York:

Whereas the corporation known as "The Bank for Savings in the City of New York," situated in the 6th collection district of the State of New York, and which is required by the 110th section of the act of June 20, 1864, as amended by the act of March 3, 1865, to make returns of and payments of tax to the Commissioner of Internal Revenue, has refused and neglected to make returns of and payments of tax "on the average amount of the deposits of money held by it, subject to payment by check or draft, or represented by certificates of deposit or otherwise," for and during the months of April, May, June, July, and August, 1865, and within the time required by law;

And whereas, by reason of such neglect and refusal, the assessor of said district has estimated and certified to me the amount of said deposits and provided by law, to wit: For the month of April, 1865, average amount of deposits held, less amount invested in U. S.
26 bonds, $8,158,996; for the month of May, 1865, average amount of deposits held, less amount invested in U. S. bonds, $8,258,996; for the month of June, 1865, average amount of deposits

held, less amount invested in U. S. bonds, $8,469,946; for the month of July, 1865, average amount of deposits held, less amount invested in U. S. bonds, $8,319,946; for the month of August, 1865, average amount of deposit held, less amount invested in U. S. bonds, $8,304,946:

Now, therefore, I do hereby, in pursuance of the requirements of the law, certify the amount of the tax due by the said corporation known as "The Bank for Savings in the City of New York," with the penalties and additions accruing thereon, to be as follows, viz:

For the tax on average amount of deposits held during the month
of April, 1865, less amount invested in U. S. bonds, $3,399 58; pen-
alty of 25 per centum for neglect to return above tax, $849 90;
27 penalty prescribed in section 110 for neglect to return and pay
tax, $200, with all the penalties and expenses accruing to the
collector of the proper district.

For the tax on average amount of deposits held during the month of May, 1865, less amount invested in U. S. bonds, $3,441 24; penalty 25 per cent. for neglect to return above tax, $860 31; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector of the proper district.

For the tax on average amount of deposits held during the month of June, 1865, less amount invested in U. S. bonds, $3,529 15; penalty of 25 per cent. for neglect to return above tax, $882 29; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector of the proper district.

28 For the tax on average amount of deposits held during the month of July, 1865, less amount invested in U. S. bonds, $3,466 64; penalty of 25 per cent. for neglect to return above tax, $866 66; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all penalties and expenses accruing to the collector of the proper district.

For the tax on average amount of deposits held during the month of August, 1865, less amount invested in U. S. bonds, $3,460 39; penalty 25 per cent. for neglect to return above tax, $865 09; penalty prescribed in secton 110 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector for the proper district.

Which sums you are required to collect by distraint and sale as provided in section 28, act June 30, 1864, as amended by the act of March 3, 1865.

(Signed) WM. ORTON, *Commissioner.*

29 A.

COLLECTOR'S OFFICE U. S. INTERNAL REVENUE,
Sixth District New York, New York, October 21st, 1865.

To the corporation known as "The Bank for Savings in the City of New York," and to the president thereof, Marshall S. Bidwell, esqr.:

Whereas the abovenamed corporation, situated in this collection district, and which is required by the 110th section of the act of June 30th, 1864, as amended by act of March 3d, 1865, to make returns of and payments of tax to the Commissioner of Internal Revenue, has refused and neglected to make returns of and payments of tax on the "average amount of the deposits of money held by it, subject to payment by check or draft, or represented by certificates of deposit or otherwise," &c., for and during the months of April, May, June, July, and August, 1865, and within the time required by law; and whereas, by reason of such neglect and refusal, the assessor of this district has certified to the said Commissioner of Internal Revenue the amount of such deposits as provided by law;

And whereas the said Commissioner of Internal Revenue has certified to me, in pursuance of the requirements of the law, the amount of the tax due by the said corporation known as "The Bank
30 for Savings in the City of New York," with the penalties and additions accruing thereon, to be as follows, to wit: For the tax on the average amount of deposits held during the month of April, 1865, less amount invested in U. S. bonds, $3,399 58; penalty of 25 per centum for neglect to return above tax, $849 90; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector of the proper district. For the tax on the average amount of deposits held during the month of May, 1865, less amount invested in U. S. bonds, $3,441 24; penalty of 25 per centum for neglect to return above tax, $860 31; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector of the proper district. For the tax on the average amounts of deposits held during the month of June, 1865, less amount invested in U. S. bonds, $3,529 15; penalty of 25 per centum for neglect to return above tax, $882 29; penalty prescribed in section 110
31 for neglect to return and pay tax, $200, with all the penalties and expenses accruing to the collector of the proper district. For the tax on the average amounts of deposits held during the month of July, 1865, less amount invested in U. S. bonds, $3,466 64; penalty of 25 per centum for neglect to return above tax, $866 66; penalty prescribed in section 110 for neglect to return and pay tax, $200, with all penalties and expenses accruing to the collector of the proper district. For the tax on average amounts of deposits held during the month of August, 1865, less amount invested in U. S. bonds, $3,460 30; penalty of 25 per centum for neglect to return above tax, $865 09; penalty prescribed in section 110 for neglect to return and pay tax,

$200, together with all the penalties and expenses accruing to the collector of the proper district:

Now, therefore, for the payment of the foregoing tax, with the penalties and additions accruing thereon, demand is hereby made.

If payment is not made to me within ten days from the per-
32 sonal service of mailing hereof, I shall proceed to collect the
aforesaid tax, with the penalties and additions accruing thereon, by distraint and sale, as provided in section 28 of the act of June 30th, 1864, as amended by the act of March 3d, 1865.

M. B. FIELD, *Collector.*

33 UNITED STATES OF AMERICA, *Southern dist. of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to nineteen inclusive, contain a true and complete transcript of the certificate of division of opinion and the exhibits thereto annexed, had in said court in the case of The Bank for Savings in the City of New York *vs.* Maunsell B. Field, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 9th day of December, in the year of our Lord one thousand eight thousand and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Filed December 14, 1865.

$200, together with all the penalties and expenses accruing to the collector of the proper district:

Now, therefore, for the payment of the foregoing tax, with the penalties and additions accruing thereon, demand is hereby made.

32 If payment is not made to me within ten days from the personal service of mailing hereof, I shall proceed to collect the aforesaid tax, with the penalties and additions accruing thereon, by distraint and sale, as provided in section 28 of the act of June 30th, 1864, as amended by the act of March 3d, 1865.

M. B. FIELD, *Collector.*

33 United States of America, *Southern dist. of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to nineteen inclusive, contain a true and complete transcript of the certificate of division of opinion and the exhibits thereto annexed, had in said court in the case of The Bank for Savings in the City of New York *vs.* Maunsell B. Field, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 9th day of December, in the year of our Lord one thousand eight thousand and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Filed December 14, 1865.

In the Supreme Court of the United States.

DECEMBER TERM, [illegible].

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK
vs.
MARSHALL B. FIELD.

No. [illegible]

ARGUMENT ON BEHALF OF DEFENDANT AND THE UNITED STATES.

JAMES [illegible]

[illegible]

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK
vs.
MAUNSELL B. FIELD.
} No. 341.

ARGUMENT ON BEHALF OF DEFENDANT AND THE UNITED STATES.

This was an application to the circuit court of the United States for the southern district of New York, preferred by the complainant, a citizen of the State of New York, for an injunction restraining Maunsell B. Field, collector of internal revenue for the sixth collection district of New York, and a citizen of that State, from proceeding to collect certain duties estimated by the assessor of the said district, under the 110th section of the act of June 30, 1864, on the average amounts of deposits with the complainant for the months, respectively, of April, May, June, July, and August, 1865.

Before the institution of this suit the defendant demanded, in writing, the payment of the said duties, and threatened, in default thereof, to collect the same, with the penalties and additions accruing thereon, by destraint and sale, as provided in the 28th section of the act of June 30, 1864.

Certain facts in regard to the chartered powers, the business and transactions of the complainant, contained in the certificate found in the record, being admitted or proved on the trial of the cause, five questions occurred on which the opinions of the judges differed, and they were accordingly certified for the decision of this court.

These questions will be discussed in their order:

FIRST.

WHETHER THE CIRCUIT COURT CAN RESTRAIN THE COLLECTION OF THE SAID TAX AND PENALTIES BY INJUNCTION?

We respectfully contend that it cannot.

1. Because the circuit court has no jurisdiction whatever of the *subject-matter* of the case.

2. Because, if it have such jurisdiction, the case is one in which the remedy, and the only remedy, provided by law, is by application to the assessor and the commissioner of internal revenue, for a correction of the alleged error of the assessment.

3. Because the circuit court has no jurisdiction of the remedy by injunction in the case presented in the record.

The third and last reason will be discussed in connexion with the argument upon the second question certified for the opinion of the court.

1.

The circuit court has no jurisdiction of the subject-matter of the case.

It cannot take cognizance of it under the 11th section of the judiciary act of 1789. The parties to the suit are both citizens of the same State. Whatever jurisdiction the circuit court has in the case, and the authority it possesses to take any judicial cognizance of it whatever, must be derived from *section* 50 of the act of June 30, 1864, extending the subsisting provisions of the Statute of March 2, 1833—the " Force Bill"—to all cases arising under the laws for the collection of internal duties. (13 Stat., 241.) The jurisdiction, then, exercisable by the circuit court in cases arising under the internal revenue laws, is subject to the same limitations as that exercisable by that court in cases arising under the laws for the collection of duties on imports. What is the extent of the latter jurisdiction?

Section 2 of the Statute of 1833 provides, "*that the jurisdiction of the circuit court shall extend to all cases in law or equity arising under the revenue laws of the United States* FOR WHICH OTHER PROVISIONS ARE NOT ALREADY MADE BY LAW." (4 Stat., 632.)

In order, therefore, that a circuit court of the United States may lawfully exercise any jurisdiction in a case arising under the internal revenue law, it must distinctly appear that for the decision of that case, and the determination of the question involved in it, "*other provisions are not already made by law.*"

The question thus suggested for consideration is, whether any, and what, other provisions are made by the Internal Revenue code, for the decision of this case and of the question it presents, for the ascertainment of the rights of the parties, and for the granting of relief to the company complainant, if its rights have been violated, or are endangered?

The complaint is of an erroneous and illegal assessment of duties. The company having neglected or refused to make return of certain property under its control which the proper assessor deems to be chargeable with a certain tax, that officer, pursuant to the Statute, has estimated the amount of such property and assessed thereupon a certain duty. The court is asked, *first*, to determine that the company is *not* within the provisions of the law under color of which the assessment has been made, and *secondly*, to interpose the strong arm of injunction to stay the collection of the tax.

We claim that the Statute has provided another jurisdiction for the decision of every phase of the question presented by this application, and for the granting of relief as adequate and efficient as that here sought; that this case belongs to a class of cases, arising under the Internal Revenue code, for which *other* provisions than an exercise of judicial power by the circuit court, is made by law; and that it is, therefore, excepted from those cases, arising under that code, which are within the jurisdiction of the circuit court.

What then are the other provisions made by the Statute of 1864 for the determination of cases of this character?

Section 1 gives the Commissioner superintending control over all matters pertaining to the assessment and collection of duties and taxes.

Section 12 makes his instructions, regulations, and directions binding on the assessors and collectors in the performance of their duties.

Sections 21 and 36 prescribe the punishment to be inflicted upon these officers for wilful neglect to perform their statutory duties, for knowingly making false or fraudulent lists, valuations, or assessments, for extortion or wilful oppression under color of law, and other offences.

Section 19 confers upon each assessor power to *re examine* and *rectify* "as shall appear just and equitable" his own assessments. The parties have the right to direct his attention to the "particular matter or thing respecting which a decision is requested," and it is his duty, on application thus made to him, to adjudge the questions involved in the assessments anew, in the light of other evidence than that in his possession at the time of his original action, and with the advantage of fresh consideration of the cases from the stand point of the appellant parties. (13 Stat., 229.)

But the judgment of the assessor is not final.

Section 44 provides:

"That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, shall be, and is hereby, authorized, on APPEAL to him made, to REMIT, refund, and pay back all duties ERRONEOUSLY ASSESSED, or excessive in amount, or in any manner wrongfully collected," &c. (13 Stat., 239.)

Thus the Commissioner is invested with ample appellate and corrective jurisdiction in this and every case that can arise under the Internal Revenue law involving a question of assessment, and with authority to enforce and execute his decisions as extensive as his jurisdiction to decide. He may take cognizance of the precise question raised by the present application. He has power to grant the same relief in effect as is here prayed. He may not only decide the question of the liability of the complainants, but if he determine that question in their favor, overruling the assessor, he may, by the terms of the Statute, REMIT the duty which has been erroneously assessed against them, and thus discharge the parties from all obligation to pay it.

The appellate jurisdiction of the Commissioner is coextensive with the subject-matters of the Statute. Cases of *void* assessments, as well as erroneous valuations and other *voidable* assessments, are within his control. He may construe and expound the law in relation to all questions of construction that can arise under it. There is no case or question between any assessor or collector and the tax-payers that can arise, which he has not jurisdiction to determine, and his determination will be as binding upon the government as we contend it is upon the citizen. In a case of over valuation or excessive taxation he may correct the error. In the case of a void assessment—where the whole proceeding is, in his view, without authority *ab initio*—he may set aside the action of the officer.

Whether the present case falls within one or the other class of assessments it is not important now to discuss. We think whether it belongs to the class of assessments in regard to which, under systems of taxation prevailing in some of the States, the only relief is by application, under the Statutes, to the executive officers, or whether it is to be classed with those assessments in regard to which, under the State systems, the judicial courts have jurisdiction, that, in either alternative, *by the Internal Revenue law*, the Commissioner has been invested with sole and exclusive authority to decide the case.

The position of the government is, therefore, that at the time the grant of jurisdiction, contained in the 50th section, was made to the circuit court in cases arising under the Statute, these executive officers, the assessor and Commissioner, were already clothed with the power and charged with the duty by sections 19 and 44, of determining all questions touching the legality of assessments of internal taxes, and of granting relief in proper cases; and that by the force and effect of the words of the 50th section, in connexion with the 2d section of the act of 1833, cases involving those questions are excluded from the jurisdiction of the circuit court.

It is to be remembered, that the question now and here is specifically as to the statutory jurisdiction of the circuit court; not whether it is expedient that the power claimed should have been granted to that court, but whether it has been granted; whether any case involving either a question of the valuation of property liable to internal duty, or a question of the proper rate or rule of taxation, or a question of the liability on the part of any individual or corporation liable to assessment at all, to pay a particular duty, has or has not been confided to the determination of the circuit court. In Sheldon *vs.* Sill, (8 How., 448,) Mr. Justice Grier said: "It must be admitted that if the Constitution had ordained and established the inferior courts, and distributed to them these respective powers, they could not be restricted or divested by Congress. But, as it has made no such distribution, one of two consequences must result. Either that each inferior court created by Congress must exercise all the judicial powers not given to the Supreme Court, or *that Congress, having the power to establish the courts, must define their respective jurisdictions.* The first of these inferences has never been asserted, and could not be defended with any show of reason, and if not, the latter would seem to follow as a necessary consequence. *And it would seem to follow, also, that having a right to prescribe, Congress may withhold from any court of its creation jurisdiction of any of the enumerated controversies.*

Courts created by statute can have no jurisdiction but such as the statute confers. None of these can assert a just claim to jurisdiction exclusively conferred on another, or withheld from all."

We contend that by the limitation imposed on the jurisdiction of the circuit court, in the statute of 1864, *every case involving any question touching the liability of any one to be assessed and taxed, or to pay any particular tax under the internal revenue laws,* is *without* the cognizance of that court; and that inasmuch as Congress has not deemed it right to commit to that court the decision of *any* such question, but has thought it proper to entrust the decision of *every* such question to executive officers, the circuit court cannot "*assert a just claim*" to the jurisdiction exclusively conferred on another department of the government.

But it may be said that Congress was not competent to deprive the federal courts of the jurisdiction now invoked, and to confide to executive functionaries the interpretation of the laws for the levying and collection of internal taxes and duties with sole authority to relieve the citizen from the consequences of erroneous or illegal exercise of power on the part of these subordinate officers; or, if the law is constitutional, that by the true construction of the act of 1864, the federal courts are invested with concurrent jurisdiction in cases, arising under the laws for the collection of internal revenue, which are within the cognizance of the assessors and the commissioner.

Neither position is maintainable. The rule of decision in regard to both questions has been clearly and pointedly and repeatedly enunciated from this bench.

The *constitutional question* which has been stated does not necessitate a consideration of the powers of Congress to deprive the citizen of all judicial remedy for violation of right of every character by federal revenue officers, and to prevent all judicial tribunals of the country from taking cognizance of any case involving a question of power or authority on the part of such officers; but the question is whether Congress has power to say that tribunals of its own creation, whose jurisdictions depend upon, and are controlled and limited by statute, tribunals that could have had no existence independently of the legislative will, and whose existence may be destroyed at any time by an exercise of that will, shall not take cognizance of questions of interpretation arising under a certain class of laws, or of complaints against public officers engaged in the administration of those laws, and that such questions and such complaints shall be adjudicated *under the authority of the United States* by officers designated by Congress, and by them alone.

The effect of the provisions of the act of 1864, to which reference has been made, upon the jurisdiction of the State courts in cases where *usurpation of authority*, or franchise, conclusively not granted, by federal revenue officers, is clearly shown, is a question that need not now be discussed or determined. The question now and here is, whether when application is made to the *authority of the United States* for relief against the acts of officers of the government, in cases clearly without their jurisdiction, as well as in cases where power conferred has been merely erroneously or wrongly exerted in the particulr instances, Congress may not constitutionally say, that the rights of the parties shall be subject to the determination of executive officers, in whom a portion of the sovereign power has been vested for enabling justice to be done, and remedy to be administered for wrong, and that the judicial courts of the *United States* shall not exercise any authority in the premises?

In *Cary* v. *Curtis*, (3 Howard 242,) this court distinctly decided the question in the affirmative.

The suit in that case was brought in the circuit court, under the act of 1833. It was a suit to recover duties, paid under protest, on imported merchandise.

The second section of the Act of March 3, 1839, (5, Stat. 348,) was pleaded in the bar of action.

This act made it the duty of each collector of customs to pay into the treasury all monies received for duties, and provided that whenever it should be shown to the satisfaction of the Secretary of the Treasury that in any case of duties paid under protest, more money had been paid than the law required, it should be the duty of the Secretary to refund the same out of any money in the treasury not otherwise appropriated.

Two questions arose: 1st. Whether Congress intended to deprive parties paying duties under protest of the right to sue in every case for their recovery, according to the principles of common law, in the Circuit Court, and to lodge the cognizance of their demands with an executive officer; and 2d. Whether if such was the intent of the statute, the legislation was constitutional? The court ruled in the affirmative on both points, and remitted the party to his remedy before the Secretary of the Treasury.

On the constitutional question the court said:—

" It is contended, however, that the language and the purposes of Congress, if really what we hold them to be declared in the statute of 1839, can not be sustained, because they would be repugnant to the Constitution, inasmuch as they would debar the citizen of his right to resort to the courts of justice. The supremacy of the Constitution over all officers and authorities, both of the federal and State governments, and the sanctity of the rights guaranteed by it, none will question. There are *concessa* on all sides. The objection above referred to admits of the most satisfactory refutation. This may be found in the following propositions, familiar in this and most other governments, viz: that the government, as a general rule, claims an exemption from being sued in its own courts. That although, as being charged with the administration of the laws, it will resort to those courts as means of securing this great end, it will not permit itself to be impleaded therein, save in instances forming conceded and express exceptions. Second, in the doctrine so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this court,) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court) for the exercise of the judicial power, and of investing them with jurisdiction, either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the government, and to give to the former powers limited by its own discretion merely. It follows then the courts created by statute must look to the statute as the warrant for their authority ; certainly they can not go beyond the statute, and assert an authority with which they may not be invested by it, or which may be clearly denied to them. This argument is in no wise impaired by admitting that the judicial power shall extend to all cases arising under the Constitution and laws of the United States. Perfectly consistent with such an admission is the truth, that the organization of the judicial power, the disposition and distribution of the subjects of jurisdiction in the federal tribunals, and the modes of their action and authority, have been, and of right, must be the work of legislation. *In devising a system for imposing and collecting the public revenue, it was competent for Congress to designate the officers of the government in whom the rights of that government should be represented in any conflict which might arise, and to prescribe the manner of trial.*"

And in a more recent case (*Curtis's Administrator vs. Fiedler,*) this court, in effect, reaffirmed the constitutional doctrine of *Cary vs. Curtis*, when it said : "*Importers, however, were not without remedy under that act (*1839 ;*) but whenever it was shown to the satisfaction of the Secretary of the Treasury that more money had been paid to the collector for such duties than the law required, it was his duty to refund the over-payment.*" (2 Black, 461.)

These cases (Cary *vs.* Curtis and Curtis's Adm., *vs.* Fiedler are authority for the *precise point* that Congress may constitutionally deprive the courts of the United States of jurisdiction to decide *any* question whatever between the citizen and the government arising under a tax-law, and commit the determination of *every* such question to an executive officer.

On the question whether the circuit court may exercise a concurrent or appellate jurisdiction in any case arising under the internal revenue laws, involving a question of assessment or liability to pay any particular duty, we remark, that as every question of assessment that can arise under those laws has been confided to the determination of the assesssing officers and the Commissioner, the circuit court, by the terms of the statute of 1864, is *prohibited* from taking *any* cognizance of such a question. By the very terms of the law the court can take jurisdiction *only* of those cases for which, at the time its jurisdiction was conferred, *other provisions had not been made by law.* All other cases, namely, those cases for which other provision was made by law, are beyond its cognizance. They are within and exclusively, as we say, within the jurisdiction of the officers authorized by law to determine them. The circuit court cannot decide them, because, by the very words of the grant, they are *excluded* from its jurisdiction.

Now we have seen that by two sections of the act of 1864, (sections 19 and 44,) prior to that section (section 50) on which the authority of the circuit court entirely depends, the power to determine the question involved in the present cause is conferred upon the assessors and the commissioner. Provision had thus been made for the present case by the 14th and 44th sections of the statute, and therefore it is not embraced by the grant of jurisdiction to the circuit court made in the 50th section. In our view of the statute cognizance of the matters cognizable by the officers of internal revenue, under the 14th and 44th sections, is expressly denied to that oourt.

There was stronger reason to induce the court, in Cary *vs.* Curtis, to adopt the opinion of the dissenting judges that the Statute of 1839 did not deprive the circuit court of the jurisdiction in the class of cases provided for by that act, which it acquired by the act of 1833, than can now be adduced in favor of its jurisdiction in the present case.

In Cary *vs.* Curtis the case was that of a later statute conferring on the Secretary of the Treasury a jurisdiction previously exercisable by the court, and it was held that the later statute impliedly repealed the earlier one, on which the jurisdiction of the court depended. Here, by the very terms of the statute, cases for which provision is already made by law are excluded from the jurisdiction of the circuit court, and yet it is claimed that cases for which provision is thus made are within the judicial cognizance of that court.

If the act of 1839 barred a claim in the circuit court for duties paid under protest instituted under the act of 1833, *a fortiori*, the 14th and 44th sections of the act of 1864, preclude the court from granting any relief in this case under the authority of the 50th section of that act.

2

If the circuit court has jurisdiction of the general subject-matter of the case, the particular assessment complained of having been made by the assessor, in the lawful exercise of his statutory jurisdiction, the only statutory remedy of the party is by application to the assessor to revise the assessment, and by appeal from him to the Commissioner.

The principle which, we respectfully contend, should be affirmed by the court is, that in any case arising under the internal revenue laws, where it clearly appears that the assessor *had jurisdiction to decide* the particular question in controversy between the citizen and the officer of the law, the circuit court has, and can have, no authority to review his determination of that question, either in an action at law or a suit in equity; and that, in every such case, the party must pursue and abide by the remedy of appeal to the Commissioner of Internal Revenue, afforded him by the statute. There can be no safety for the public REVENUE, and therefore no safety for the STATE, if any other principle should be adopted by the judiciary. If the courts should take unto themselves the decision of every question of assessment which any tax-payer, on any occasion, may choose to bring before them, at law or in equity, no one can tell how soon the ample and intricate machinery provided for the due execution of these revenue laws, and upon whose regular and rapid movement depends so much, whether of weal or woe, for the PUBLIC CREDIT, may receive fatal injury. The highest public policy forbids the judiciary exercising any jurisdiction, under a system of laws like the one under consideration, which is not clearly and conspicuously defined in the statutes. The courts should incline, strongly and strenuously, against asserting the judicial power in any case which the statutes have committed to the decision of the revenue officers. They should require it to be made clearly apparent, before entertaining jurisdiction in any case involving questions of assessment, that the officers either have exerted, or intend to exert, *a franchise which has not been granted*, and are thus in the position of *usurpers* of authority. In all that class of cases where the questions in controversy are merely questions whether jurisdiction conferred on revenue officers has been rightly and judiciously exercised, the courts should disavow jurisdiction, and remit the parties to the remedies which the statute affords.

That Congress, in legislating under any of its enumerated powers, is competent to confer upon executive officers the authority to decide all questions between the government and the citizen, arising in the due course of the administration of its laws, no man can be supposed to doubt. In the execution of every law questions will necessarily arise, from time to time, as to the rights of individuals interested in, or affected by, the law, and they must be determined under executive authority; and individuals as well as the government must be held to be bound by such determination. Congress is not bound to commit to the judiciary the decision of all questions between the government and the citizen, arising under and in the course of the execution of its legislation. The questions may be judicial in their general character, but every judicial question is not necessarily a question for a court. The courts can only determine such a question when it arises in a case of which they have jurisdiction. They acquire no jurisdiction of a case simply because it involves a judicial question. The point here suggested, however, has been distinctly passed upon by the court. In Cary *vs.* Curtis, the court say: "In devising a system for imposing and collecting the public revenue it was competent for Congress to designate the officer of the

And for the law in Massachusetts.

Osborn *vs.* Inhabs. of Denvers, 6 Pick, 100.
Little *vs.* Greenleaf *et al.*, 7 Mass., 238.
Howe *vs.* City of Boston, 7 Cush., 274.
Lincoln *vs.* Worcester, 8 Cush., 64.
Middlesex R. R. Co. *vs.* City of Charlestown, 8 Allen, 332.

We say, therefore, that inasmuch as, under the statute, the assessor had ample *jurisdiction* to decide the particular question presented by the present case, as between the government and the company—namely *the liability of the company to pay the tax imposed by the* 110*th section of the act of* 1864—the decision of the assessor cannot be reviewed in this, or any other, judicial proceedings, and can only be corrected, if erroneous, by the officer himself, under section 14 of the act, or on appeal by the Commissioner, under section 44 of the statute. Until that is done the judgment of the assessor remains a valid and and conclusive judgment, determining the rights of the parties in the premises.

In an opinion, rendered June 7, 1858, to the Secretary of the Treasury, Attorney General (formerly Chief Justice) Black said:

"There is no principle of jurisprudence better established, or more universally acknowledged than this, that when a matter is once decided by a tribunal having competent jurisdiction, the same matter is not afterwards open to dispute between the same parties before another tribunal, either collaterally or directly, on the facts or the law. Any person or persons, whether constituting a court, legislative committee, or executive department, upon whom the power is conferred by law to decide the right of a party, is a tribunal of competent jurisdiction for that purpose, and the decision is conclusive and binding upon all other tribunals except those to whom the law has given appellate jurisdiction"—(Glossbrenner's Accounts, M. S. Ops., 1858, p. 164.)

This principle has been, in so many words, expressed by this Court.
U. S. *v.* Arredondo, 6 Peters, 691;
Bartlett *v.* Kane, 16 How. 272;
Belcher *v.* Linn, 24 How. 522;
Iasigi *v.* The Collector, 1 Wallace, 384.

SECOND.

WHETHER AN INJUNCTION CAN PROPERLY ISSUE IN THIS CASE?

Let it be conceded that the foregoing views are incorrect, and that the circuit court has jurisdiction of the subject-matter of this suit, then we shall contend that the facts certified to this court do not constitute a case for an injunction.

I. *We believe that there is no well considered case anywhere to be found in which an injunction was granted against a public officer of the government restraining him from doing an act in the line, and within the exercise, of the duties confided to him by a valid law, and that in every case where such an officer was restrained, by the process of injunction, it clearly appeared that the officer had arrogated to himself a power not vested in him by law.*

The principle is stated by the Lord Chancellor in *Frewin* vs. *Lewis*, (4 Mylne and Craig, 255,) thus:

"Now, I apprehend that the limits within which this court interferes with the acts of a body of public functionaries, like the poor law commissioners, are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties *which are confided to them by law*, this court will not interfere. The court will not interfere to see whether any alteration or regulation which they may direct is good or bad; *but, if they are departing from that power which the law has vested in them; if they are assuming to themselves a power over property which the law does not give them, this court no longer considers them as acting under the authority of their commission, but treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority.*"—(See also Adams's Equity, 212.)

Applying this principle to the present case, how can the jurisdiction of the court in equity be supported? The collector defendant is acting under an assessment, *every question involved in which it was within the statutory competency of* *the assessor to decide.* He had jurisdiction of the party, and the entire subject-matter and every question involved in it. Did the assessor exercise a power *not* granted when he proceeded to determine the liability of the complainants to pay this tax? The question is *not* whether he decided wrongly on the facts and the law of the case, but whether he had *authority* to decide. *Was he within the line and exercise of the duty confided to him by statute when he undertook to determine the liability of the company?* These are the questions which a court of equity must answer when an injunction, in such a case, is asked, and being answered in the affirmative, *no mistake of fact or of law on the part of the assessor, in deciding the question, can avail the complainants as a ground for the exercise of the extraordinary relief applied for.* We have already shown that the special duty cast upon the assessor by the statute and his commission was the decision of the very question now agitated, of the liability of this company to pay the duty under section 110 of the act. *The assessment cannot therefore be held a void assessment.*

II. But again, even in the case of a void authority exercised by a public officer, an injunction never issues on the application of a private individual unless it appear that he is about, by such exercise, to do any act which brings the case within one of the well-defined heads of equity jurisdiction; as an act in breach of trust, in derogation of a contract which ought to be specifically performed, *or an act of irreparable mischief to the real estate of another.*

Attorney General *vs.* Forbes, 2 M. & C., 132, 130, 135.

It may be doubted whether a public tax officer was ever held liable to be injoined in any case where the anticipated injury would effect personalty alone.

In the case of real estate, however, the question, whether the damage is irreparable or not, is a conclusion of law which the court draws, according to its own rule, from the facts and circumstances in regard to the trespass; and the *criterion* by which it determines the character of the mischief is the ability of an action at law to restore the party to his former condition—to make him whole. (Hilliard on Injunctions, 281. Adams on Equity, 207.)

III. Has the company, complainant, an adequate remedy at law? We say it has.

1.

It may avert the threatened injury to its property by paying the assessed tax, and then, if it place itself in the position to show that the payment was not voluntary—as by making protest against the exaction at the time of payment—its right to recover the money, if the tax is illegal, is clear, under the common law and the statutes of 1864 *and* 1865.

This proposition involves the consideration of two questions: 1st, whether, assuming that the obligation imposed by section 3 of the act of 1865 on every collecter to pay all monies into the treasury, does not defeat the right of a party so situated to maintain an action at law against the collector, such an action may be maintained according to the jurisprudence of the common law; 2d, whether section 3 of the act of 1865 has the effect of destroying the right of recovery in such a case as this, after payment of the money under protest?

On the first question we remark, that no well founded destinction can be drawn between the liabilities of collectors of internal revenue and those of collectors of customs, under our foreign revenue system, based upon the difference in the machinery organized by Congress for the assessment and collection of taxes or duties levied under the respective systems of laws. According to the foreign customs acts, the collectors are both assessing and collecting officers. Under the excise laws the functions of assessing and collecting are distributed between two separate officers.

Now, this court has adjudicated the point, that the legal liability of a collector, under such an arrangement of the system for the collection of taxes, is not affected by his relations to the assessor.

In the case of *Hays* vs. *The Pacific Mail Steamship Company*, (17 How , 600,) it was distinctly ruled that no objection would lie to the recovery of a tax which had been paid under compulsion by a collecting officer, on the ground that the assessment by the assessor was in the nature of a judicial act. The court said, "the assessment was not a judicial, but a ministerial act, and as the assessors exceeded their powers in making it, the officer (the collector) is not protected. The payment of the tax was not voluntary, but compulsory, to prevent the sale of one of the steamships."

We remark, secondly, on the first question before stated, that this court has twice, at least, solemnly and deliberately decided that an action for money had and received is the known and appropriate remedy of the common law, applied to cases of illegal assessments to protect the citizen from illegal taxation and duties levied unlawfully by public officers; that the action will lie in all cases to recover back money which a person pays to a revenue or other public officer in order to obtain possession of his goods from the latter, withheld upon an illegal demand or claim, *colore officii;* or, if the property is not in the actual possession of the officer, to save the goods from distress and sale; and that payment to an agent or public officer of the government, with notice that the money is wrongfully demanded, and protest against the legality of the demand, will, at common law, create a liability on the part of the agent or officer who shall pay over to the government in despite of such notice.

Elliott *vs*. Swartout. (10 Peters, 149.)

Bend *vs*. Hoyt. (13 Peters, 267.)

Hays *vs*. Steamship Company. (17 How., 600.)

In the presence of the careful exposition of the law on these points by this Court, we are warranted in treating them as, in the highest sense, *adjudicated*. If the foregoing authorities do not sustain the right of the complainant according to the common law, to recover back the present duty, if it is illegal, after payment under the compulsion of the collector's warrant, then their import is indeed obscure.

2. The second question is as to the effect of the third section of the act of March 3, 1865, which provides: "*That the gross amount of all duties, taxes, and revenues received or collected, &c., shall be paid by the officers, collectors, or agents receiving or collecting the same, daily into the treasury of the United States without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description whatever.*" (13 Stat., 483.)

The argument may be pressed that this provision is to have the same effect upon the liability of the collector and the right of the tax-payer to recover, as was attributed by this Court to the act of 1839, in the case of Cary *vs.* Curtis, and that, therefore, it takes away the right to sue for duties paid under protest, excluding all basis for an implied promise of repayment by the officer, and rendering void an express promise by him.

On this point we remark:

(*a.*) That, by force of the doctrine of *noscitur a sociis*, the words "*claims of any description whatever*" are to be construed to mean claims of the collector in which he is personally interested, and not to embrace moneys received for duties paid under protest.

(*b.*) That it is to be conclusively presumed that Congress intended that the obligation and duty here imposed upon the collector should have no other effect than that which, according to its own view, as expressed in the act of 1845, chap 22, should have been attributed to the act of 1839. The Supreme Court, in Cary *vs.* Curtis, having decided that section 2 of the act of 1839, took away the action of assumpsit from parties paying duties under protest, Congress, in 1845, provided that the act of 1839 should not be so construed as to impair the right to that action. This is a legislative definition of the meaning of such legislation as the act of 1839, and the act of 1865 (section 3) must be presumed to have been intended by Congress for the same purpose, and to have the same meaning and effect as the act of 1839, and no other.

(c.) The act of 1864 (section 44) expressly provides for indemnifying the collectors for moneys recovered against them in any court for any internal duties. (13 Stat., 239.) The act of 1865 (section 3) does not repeal this provision, and the Commissioner is still authorized to repay to the collectors all sums thus recovered against them.

The legislative recognition, in section 44 of the act of 1864, of the liability of the collectors, in proper cases, still stands unaffected by the provision in section 3 of the act of 1865.

These remarks constitute a conclusive answer to any argument against the subsistence of the right of suit against collectors of internal revenue, based on the provision of section 3 of the act of 1865.

We say, then, that according to the common law, and under the acts of 1864 and 1865, every person who may be assessed illegally for internal taxes, may recover them back, if he pay them under compulsion and protest, in an action of assumpsit against the collector.

2.

The Court of Claims has jurisdiction to entertain a claim against the United States founded upon a payment of internal duties illegally assessed and collected under circumstances of constraint and compulsion, with notice that they were so paid

See acts of 1855, ch. 122, sec. 1.

Acts of 1863, ch. 92, sec. 7.

In Massachusetts, New York, and other States suits against cities and towns to recover, as on implied promises, taxes illegally assessed and collected under the compulsion of threats of levy and distraint, are of common occurrence; and we think there is no reason to doubt, if any judicial tribunal can take cognizance of cases under the internal revenue law involving questions of assessment, that in every case in which *indebitatus assumpsit* will be against a city or town to recover a tax paid into the public treasury, a claim may be maintained in the court of claims, under similar circumstances and conditions, to recover internal duties that may have passed into the treasury of the United States.

See for the law in Massachusetts:

Preston *vs.* Boston, 12 Pick, 7.
Perry *vs.* Dover, 12 Pick, 206.
Osborn *vs.* Danvers, 6 Pick 98.
Howe *vs.* Boston, 7 Cush., 273.
Railroad Co. *vs.* city of Charlestown, 8 Allen, 332.
Lincoln *vs.* city of Worcester, 8 Cush., 60.

See for the law in New York:

Seaman *vs.* Benson, 4 Barb., 448.
Fleetwood *vs.* city of New York, 2 Sand., 481.
Insurance Co. *vs.* Supervisors of Erie, 4 Comst., 442.

3.

The liability of the assessor in an action of trespass, or trespass on the case, for damages suffered by reason of the execution of the assessment, if illegal, by the collector, is also clear.

Chief Justice Shaw says, in Massachusetts, that the common and ancient course was to bring "trespass against the assessors, in all cases where the plaintiff intended to hold that he was not liable at all, and that the tax was wholly void. It proceeded on the ground that, in trespass, all are principals, including those who command an illegal act to be done."

Lincoln *vs.* City of Worcester, 8 Cush., 58.
Dillingham *vs.* Snow, 5 Mass., 558.
Freeman *vs.* Kenney, 15 Pick, 46.
Dickenson *vs.* Billings, 4 Gray, 45.

In Pennsylvania the law is the same:

Moore *vs.* Allegheny City, 6 Harris., 58.

And in New York also:

Saunders *vs.* Springsteen, 4 Wend., 429.

In Matter of Mount Morris Square, 2 Hill, 29.

Weaver *vs.* Devendorf, 3 Denio., 120.

Prosser *vs.* Secor, 5 Barb., 611.

The People *vs.* Supervisors of Chenango county, 1 Kernan, 563.

And also in Maine:

Ford *vs.* Clough, 8 Greenleaf, 334.

Sec. 44 of the act of 1864, expressly provides for indemnifying the assessors for suits brought against them by reason of anything done in the due performance of their official duties. It may be held, therefore, to impliedly authorize the remedy suggested against assessors of internal revenue.

Each of the foregoing remedies will afford the complainant full and ample satisfaction and indemnity for every possible injury that may result from the execution of the assessment.

But it may be said tbat equity often interferes to remove a *cloud* from the title to reality, and that the proceedings instituted for the assessment and collection of the tax, in the present instance, may or do throw a cloud over the title of the company to its real estate. The court of errors, of New York, in the case of Mayor, &c., of Brooklyn *vs.* Meserole, (26 Wend., 138,) decided, that, in legal contemplation, no such doubt could be cast over title to land by such proceedings, as entitled chancery to interpose, and the same decision was made by the supreme court of Rhode Island in the case of Greene *vs.* Mumford, collector, (5 Rhode Island, 476.) See also Van Doren *vs.* Mayor, &c., of New York, (9 Paige, Ch. R., 390.) The ground on which the courts proceeded was, that if the proceedings are *void* the title is not affected by the sale made to satisfy the tax, and if they are merely *voidable* or irregular, the only remedy afforded is by application and appeal to those officers who have authority to revise and reverse the proceedings of the assessor and collector. It will be observed, also, that section 30, of the act of June 30, 1864, (13 Stat., 235,) provides for the redemption, within one year, of lands sold for the non-payment of internal duties.

4.

The jurisdiction of courts of equity to control by injunction the action of officers of this description has been denied and repudiated almost as often as it has been attempted to be invoked; and, it is believed, that no case of authority can be found, in all the volumes of English and American equity reports, where the jurisdiction was controverted, in which the court injoined a tax or revenue officer from proceeding to collect a tax illegally assessed, on the ground of equity alone presented by this bill.

(*a*) In *England*, it is believed, after careful examination of the books, a bill for an injunction against a collector of customs or excises has never been sustained. This is the strongest negative evidence that could be adduced against the possession of such a jurisdiction as is here claimed for chancery.

(*b*) In *Massachusetts* we have good authority for the assertion that, "*no suit in equity is found reported, or is known to have been instituted against either collectors or assessors of taxes.*" (Brief of Messrs. Dana and Field, in case of Lowell *v.* Pierce, U. S. C. C. Mass., Oct. T, 1865, p. 8.)

(*c*) In *Pennsylvania* the supreme court, in Hughes *v.* Kline, (6 Casey, 231,) declared that equity possessed no jurisdiction to review the judgment of assessors of taxes.

(*d*) In *Rhode Island* the subject was considered with great care by the supreme court in the case of Greene *v.* Mumford, collector, (5 Rhode Island, 474;) and the notion was utterly repudiated by the court that there was any general jurisdiction in equity to restrain the collection of the ordinary public revenue taxes, though they be illegal.

(*e*) In *Illinois* equity cannot interfere with the collection of a tax, unless it is levied by a body having no authority of law therefor. Town of Ottawa *v.* Walker, 21 Ill., 610.

(*f*) In *New York* the cases of this character, in which injunctions were applied for, are multitudinous. But it is thought that the reports of that State contain no *good case* (in which the point of jurisdiction was contested,) in favor of this application.

In the following cases equity jurisdiction in this class of cases was denied.

Mooers *v.* Smedley, 5 Johns., Ch. R., 28.

Wiggins *v.* Mayor, &c., of New York, 9 Paige, 17.

Mayor, &c., *v.* Meserole, 26 Wend., 132, (overruled the chancellor in 8 Paige, 198.)

Van Doren *v.* Mayor, &c., of New York, 9 Paige, 388.

Livingston *v.* Hollenbeck, 4 Barb., Sup. C. R., 10.

Bouton *v.* The City of Brooklyn, 7 How. Pr. R., 198.

Wilson *v.* The Mayor, &c., of New York, 4 E. D. Smith's R., 706.

There are other New York cases reported, in which bills in equity were entertained in cases of illegal assessments of taxes; but it is thought that in *all* of them the question of jurisdiction was not raised by tacit agreement of parties, or was expressly waived by them. These cases are all mentioned in the exhaustive opinion of Woodruff, J., in Wilson *v.* The Mayor, &c., of New York. (Supra.)

The question seems to have been finally settled in New York by the court of appeal, in Heywood *v.* City of Buffalo, (14 N. Y., R. 534;) all the judges holding that equity should not be applied to, to restrain the collection of a tax or assesment which was void.

(g.) In *Connecticut* the same doctrine prevails, Dodd *v.* City of Hartford, 25 Conn. 238.

(h.) Bills in Equity, in at least six cases, are known to have been exhibited in the several circuit courts for New York, New Jersey, and the eastern district of Pennsylvania, praying injunctions against assessors and collectors of Internal Revenue, but the learned justices, NELSON, BETTS, GRIER CADWALADER, and FIELD, seem to have all concurred in opin-

ion that the jurisdiction did not exist, and that the bills should be dismissed.

5.

The two cases in which this court interposed the authority of equity for the protection of parties against trespasses on the part of collectors of taxes, were cases in which relief was sought against STATE *officers who were proceeding to execute* STATE *laws judicially determined to be in violation of the Constitution of the United States, and therefore void, and consequently aws incapable of affording any protection to the persons who attempted to carry them into execution.*

OSBORN *v.* U. S. BANK, 9 WHEATON, 816.

The court determined:

1st. That the law of Ohio, levying an annual tax of $50,000 on each office of discount and deposit of the Bank of the United States in that State, was unconstitutional, and furnished no authority or protection to the State officers.

2d. That it was morally certain that the effect of the execution of the laws would be the total destruction of the franchise of the Bank, and its expulsion from the State.

3d. That the case was, therefore, not the case of a public officer proceeding even under color of authority, but of an individual who had *usurped* power. without any authority of law, and not the case of a casual trespass, but a continuing trespass that would have resulted in total annihilation of the franchise of an important fiscal agent of the general government.

Of course injunction was the proper, because the only adequate, remedy in such a case.

DODGE *v.* WOOLSEY, 18 HOW., 331.

This was the case of a bill in equity, exhibited by a stock holder of a bank to prevent the officers of a State from collecting an *unconstitutional* tax, which the directors of the institution, by a breach of trust, refused to resist by proper suit.

This, also, was a clear case, where the unconstitutionality of the law, under which the officer claimed authority, deprived him of any protection whatever, and placed him in the position of a *usurper of a franchise*, and also where the breach of trust, on the part of the bank directors, gave the stockholder a clear ground on which to apply for equitable relief.

6.

This case is clearly distinguishable in principle from the cases just cited.

There is no pretence here,

1st. That the law is unconstitutional; or

2d. That the particular tax is not assessible by law against parties liable to pay it; or

3d. That the complainants are not within the jurisdiction of the assessor, and may not be assessed by him; or

4th. That the validity of the assessment, depends upon *any other* question than the question, *whether the complainants are liable, under the law, to pay the tax;* or

5th. That, by the statute, it is not the duty of the assessor to determine that question, in the first instance.

The effort, therefore, is to get this court, on a bill in equity, to review the judgment of an executive revenue officer on a question which he has full jurisdiction by law to determine as between the government and the tax-payer.

If the present question of construction or interpretation of this revenue law may be thus brought before this court, then evary question of like character, under every revenue law —internal as well as external—may be subjected to the decison of this court; and while it is deliberating and deciding the taxes will remain unpaid, and the public credit may be shaken to its very foundation.

7.

Lastly, we observe, no lawyer or judge seems to have dreamed, before these internal revenue laws were enacted, that the act of 1833—*the Force Bill—conferred any authority upon the circuit courts to restrain the collection of any duty claimed to be payable to the United States.*

Revenue laws have existed since the establishment of the government, but who ever heard ot a bill in equity brought to restrain a collector of customs from assessing and collecting a duty, claimed to be imposed by a tariff law, on an article of imported merchandise? The fact that such an experiment, with the jurisdiction of courts of equity, was never made, under the act of 1833, before the organization of our system of internal revenue, is sufficient to raise the strongest judicial doubt that equitable jurisdiction does not exist in this class of cases; and thus to induce the dismissal of the present bill, in view of the principle, stated by Mr. Justice Baldwin, that injunctions will not be awarded "*in doubtful cases*, or *in new ones not coming within well established principles*." (Bonaparte *vs.* Cam. & A. R. R. Co., 1 Bald. 218.)

THIRD.

WHETHER THE PLAINTIFF IS, UNDER THE 110TH SECTION OF THE ACT OF JUNE 30, 1864, AS AMENDED BY THE ACT OF MARCH 3, 1865, LIABLE TO PAY A DUTY OF ONE TWENTY-FOURTH OF ONE PER CENTUM PER MONTH ON THE AVERAGE AMOUNT OF MONEY SO RECEIVED AND INVESTED OR LOANED AS AFORESAID, AND REPRESENTED AND ENTERED IN THE PASS-BOOK AS AFORESAID, AND PAYABLE TO THE PARTIES ENTITLED UNDER AND IN PURSUANCE OF THE 3D, 4TH, 6TH, 7TH, AND 9TH OF THE BY-LAWS OF THE PLAINTIFF.

It is enacted by the 110th section of the act of June 30, 1864, "That there shall be levied, collected, and paid a duty of one twenty-fourth of one per centum each month upon the average amount of the deposits of money subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking; * * * Provided, that this section shall not apply to any savings-bank, having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking."

The business in which the plaintiff was engaged can not be more aptly described than in the words of the proviso to this section.

The plaintiff was incorporated by the name of "The Savings Bank of the City of New York." This name indicates that the corporation was endowed with some, if not all, of the powers of a bank. After declaring that the corporation shall not issue notes, make discounts, or transact any business which belongs to, or is transacted by, incorporated banks, other than is specified, the charter proceeds to invest the corporation with power to receive as deposits from the earnings of tradesmen, mechanics, laborers, minors, servants, and others, all sums of money that may be offered to be invested for their use and benefit.

Looking to the name of plaintiff—"The Savings' Bank of the City of New York"—to the specific powers conferred in the charter to receive deposits of money for investment, and to the powers that are denied in the charter, it would seem plain that the legislature of the State of New York regarded the association as a bank. It is a bank by its name; it is a bank by the nature of its powers, and the legislature of the State of New York intended it for a bank; and it is just such a bank as is described in the proviso.

Having been excepted out of the operation of the 110th section by the proviso, it was not taxed under the act as it originally stood. But it may be said that the proviso was added out of abundant caution, and that it is, in fact, surplusage, inasmuch as such an association was not embraced in the enacting part of the section. In taking this position, it is assumed that the proviso must be disregarded, and not looked to, or considered, in giving construction to the statute; or, rather, that the construction of the statute is not influenced one way or the other by reason of the proviso. Clearly this is not so. If the proviso does nothing else, it affirms that a "savings bank," having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which does no other business of banking, is a bank. It affirms that the receiving of deposits, and loaning the same on interest for the benefit of the depositors, is a banking business. This affirmation is nowhere so distinctly made as in this proviso, and in the proviso to the 79th section, and is of consequence in giving construction to the section. The enacting part of the section says, "that there shall be levied, collected, and paid one twenty-fourth per centum each month upon the average amount of the deposits of money subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking." And it is plainly written in the proviso that a corporation having no capital, and whose business is confined to receiving deposits, and loaning the same on interest for the benefit of the depositors only, is a bank. It follows, of course, that such a bank is within the enacting part of the statute. Reading the statute with the proviso, it is obvious that such an association was regarded as a bank, and liable to pay the assessment.

But it is also obvious that the plaintiff is liable, if the proviso had never been appended—if there had been no express affirmation that such an institution was a bank within the meaning of the act.

In order that the per centum shall be levied, three things are essential :

1st. There must be a deposit of money.

2d. The money so deposited must be subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day.

3. The deposit must be with a person, bank, association, company, or corporation engaged in banking.

There can be no question as to the first of these three essentials. The plaintiff did receive money on deposit.

As to the mode of repaying the deposits, it is provided in the charter of incorporation that the money shall be repaid to each depositor when required, at such times, and with such interest, and under such regulations, as the board of trustees shall, from time to time, prescribe. Thus, it appears from the charter of the plaintiff that the deposits are "*subject to payment by check, or draft, or certificates, or otherwise, on demand, or at some future day,*" as may be prescribed by regulations to be made by the board of trustees.

The trustees did adopt by-laws regulating the mode of making, and withdrawing, deposits. The 3d regulation requires that each depositor shall subscribe his name to the regulations, thereby making them an agreement between the bank and each depositor, and that his pass-book shall contain a printed copy of the regulations.

The 4th regulation requires all deposits to be entered in the books of the bank, and also in a pass-book to be delivered to the depositor; and that pass-book is, in effect, made a certificate of deposit. The possession of the pass-book is made sufficient authority to warrant the payment of the sums entered in it, thereby making it a check, or order.

The 6th regulation gives the bank liberty to return any deposit, in whole or in part, at its pleasure.

The 7th regulation requires that drafts for deposits shall be made personally, or by written order, duly authenticated, and must be accompanied by the pass-book.

The 8th regulation prohibits the payment of any moneys to depositors, except upon a week's notice, and except on the third Mondays in January, April, July, and October; but moneys may be voluntarily paid by the bank daily, and without such notice, and without thereby waiving the right of the bank to such notice and time of payment.

The 9th regulation says that no draft shall be made for less than one dollar, nor for the fractional parts of a dollar, unless it be for the whole amount remaining on deposit, or for interest only.

It is insisted that, under the plaintiff's charter, the trustees have not the authority to make regulations in regard to the payment of deposits that will take the institution from under the operation of the 110th section.

But it is especially insisted that the regulations above recited do make deposits payable at stated periods; but the bank may dispense with the time, and pay as often as, and when it pleases. The plain effect of the 4th regulation is to make the pass-book a certificate. But, if it is not, then the mode of payment prescribed in these regulations is embraced under the word "otherwise," as used in the statute.

Looking, then, at the enacting part of the section without the proviso, at the charter of the plaintiff, and at the regulations made in pursuance of the charter, the plaintiff is liable to the monthly assessment.

When, by the amended act of March 3, 1865, the proviso was stricken from the statute, the plaintiff became liable. (13 Stat. at Large 479.)

That such is the case is still more manifest from the first subdivision of the 79th section of the statute of 1864. In that subdivision, after fixing the price of licenses to bankers, it is enacted that "Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes, are received for discount or sale, shall be regarded a banker under this act: *Provided*, That any savings bank, having no capital stock, and whose business is confined to receiving deposits and loaning the same for the benefit of its depositors, and which does ~~do~~ other business of banking, shall not be liable to pay no? for a license as a banker." (13 Stat. 251.)

The proviso to this section has not been stricken out, but still remains in the act.

This subdivision describes three classes of persons as bankers for the purposes of the act:

the charter of incorporation that the money shall be repaid to each depositor when required, at such times, and with such interest, and under such regulations, as the board of trustees shall, from time to time, prescribe. Thus, it appears from the charter of the plaintiff that the deposits are "*subject to payment by check, or draft, or certificates, or otherwise, on demand, or at some future day,*" as may be prescribed by regulations to be made by the board of trustees.

The trustees did adopt by-laws regulating the mode of making, and withdrawing, deposits. The 3d regulation requires that each depositor shall subscribe his name to the regulations, thereby making them an agreement between the bank and each depositor, and that his pass-book shall contain a printed copy of the regulations.

The 4th regulation requires all deposits to be entered in the books of the bank, and also in a pass-book to be delivered to the depositor; and that pass-book is, in effect, made a certificate of deposit. The possession of the pass-book is made sufficient authority to warrant the payment of the sums entered in it, thereby making it a check, or order.

The 6th regulation gives the bank liberty to return any deposit, in whole or in part, at its pleasure.

The 7th regulation requires that drafts for deposits shall be made personally, or by written order, duly authenticated, and must be accompanied by the pass-book.

The 8th regulation prohibits the payment of any moneys to depositors, except upon a week's notice, and except on the third Mondays in January, April, July, and October; but moneys may be voluntarily paid by the bank daily, and without such notice, and without thereby waiving the right of the bank to such notice and time of payment.

The 9th regulation says that no draft shall be made for less than one dollar, nor for the fractional parts of a dollar, unless it be for the whole amount remaining on deposit, or for interest only.

It is insisted that, under the plaintiff's charter, the trustees have not the authority to make regulations in regard to the payment of deposits that will take the institution from under the operation of the 110th section.

But it is especially insisted that the regulations above recited do make deposits payable at stated periods; but the bank may dispense with the time, and pay as often as, and when it pleases. The plain effect of the 4th regulation is to make the pass-book a certificate. But, if it is not, then the mode of payment prescribed in these regulations is embraced under the word "otherwise," as used in the statute.

Looking, then, at the enacting part of the section without the proviso, at the charter of the plaintiff, and at the regulations made in pursuance of the charter, the plaintiff is liable to the monthly assessment.

When, by the amended act of March 3, 1865, the proviso was stricken from the statute, the plaintiff became liable. (13 Stat. at Large 479.)

That such is the case is still more manifest from the first subdivision of the 79th section of the statute of 1864. In that subdivision, after fixing the price of licenses to bankers, it is enacted that "Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes, are received for discount or sale, shall be regarded a banker under this act: *Provided,* That any savings bank, having no capital stock, and whose business is confined to receiving deposits and loaning the same for the benefit of its depositors, and which does ~~do~~ other business of banking, shall not be liable to pay for a license as a banker." (13 Stat. 251.) no?

The proviso to this section has not been stricken out, but still remains in the act.

This subdivision describes three classes of persons as bankers for the purposes of the act:

1st. A person having a place of business where credits are opened by the deposit of money or currency subject to be paid or remitted upon draft, check, or order.

2d. A person having a place of business where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes—and,

3d. A person having a place of business where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale. That the plaintiff is described in the 1st and 2d description of branch one of section 79, would seem almost too plain for argument, and certainly so, when considered in connexion with the proviso.

It cannot be said that the proviso, to the first branch of the 79th section, takes the plaintiff out of the 110th section. If this had been so, there would have been no use for the proviso to the 110th section. Besides, the object of the proviso is definitely stated to be that such a bank "*shall not be liable to pay for a license.*" The office of the proviso is fully accomplished when it says that a saving's bank having no capital stock, and whose business is confined to receiving deposits, and loaning the same for the benefit of the depositors, and which does no other business of banking, shall not be liable to pay for a license. As has been said, the proviso affirms that such an institution is a bank, and cannot by any rule of interpretation be made to say the contrary or do any thing other than relieve the bank from the payment of the license. It is a proviso to that section, and nothing more. By the terms of the proviso, it is as certainly limited to relieving the bank from the payment of the license, as was the proviso to the 110th section limited to that which reads, "*that this section shall not apply to any savings bank,*" *&c., &c.*

The question now before the court was fully discussed in the Senate of the United States in the debate upon the passage of the amended act of 3d of March, 1865. (See the Congressional Globe, part 2, and appendix, 1864–'5, page 1,183.)

Many senators participated in the debate, and each and all of them were of the opinion, that if the proviso to the 110th section was stricken from the act, such banks as that of the plaintiff, would be liable to the payment of the one twenty-fourth per centum each month upon the average of the deposits. The debate clearly and certainly shows that those who advocated the amendment intended that the act should apply to such banks as that of the plaintiff.

We think, then, that the plaintiff is a bank within the description as given in the 110th section;

That it is a bank within the description of the 1st branch of the 79th section;

That it is a bank within the true intent and meaning of its charter;

That the by-laws of the bank by their title "of the business of the bank," and in their substance recognize the fact that the plaintiff is a bank; and,

That as a bank or association, it is liable to be assessed on monthly deposits, like other banks.

FOURTH.

WHETHER MONEYS SO RECEIVED AND INVESTED ARE DEPOSITS WITHIN THE MEANING OF THE ACT OF CONGRESS?

Little need be said on this question after what has been stated. All the moneys received by the bank, whether for investment or not, are deposits within the meaning of the charter of the bank, and within the meaning of the by-laws. The money is not loaned to the bank, but is a deposit with the bank to be loaned for the benefit of the depositor. As to the money, the bank is a depositee, not a debtor. The duties and liabilities of the bank are those of a depositee, as well before as after investment. The fact that the money has been invested does not change the relations of the parties. It follows that the moneys received and invested are deposits in fact and within the meaning of the act of Congress.

FIFTH.

WHETHER MONEYS RECEIVED ON DEPOSIT IN ANY ONE MONTH AND INVESTED AS AFORESAID DURING THE SAME MONTH, ARE DEPOSITS WITHIN THE MEANING OF SAID ACTS, SO AS TO RENDER THE PLAINTIFF LIABLE TO PAY A TAX THEREON FOR SUCH MONTH?

As has been shown, all moneys received, whether invested of not, are deposits, and being such are liable to the taxation, though invested on the day of the deposit.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Asst. Attorney General.

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Supreme Court

OF UNITED STATES.

THE BANK FOR SAVINGS IN THE
CITY OF NEW YORK,
vs.
MANSELL B. FIELD.
Plaintiff's Brief.

This case comes before the Court upon a certificate of division from the Circuit Court for the Southern District of New York.

The main question presented is as to the liability of the plaintiff to pay monthly a duty of $\frac{1}{24}$ of one per cent. upon the moneys received and invested or loaned by it as upon deposits with a person or corporation engaged in the business of Banking under the 110th section of the Internal Revenue Act of June 30th, 1864, as amended March 3d, 1865:

The action was brought in the Supreme Court of New York to restrain the collection of $11,962.75, assessed by the Commissioner of Internal Revenue upon an estimate by the proper assessor for want of a report by the plain-

We [illegible] ought to come here as trustees – That is our character. It establishes the court['s] title to jurisdiction tiff as a tax upon the average amount of moneys out upon loan, or invested for individuals by the plaintiff in pursuance of its charter during the months of April, May, June, July and August, 1865, regarded by the commissioner as "deposits" with a corporation "engaged in the business of Banking," together with $5,334.25 as penalties for omitting to make returns and pay the tax, amounting in the aggregate to $17,297.

The defendant is the Collector of Internal Revenue for the 6th District of New York, and had before the commencement of this action received a warrant from the Commissioner for the collection of said tax and penalties, and was about to proceed to collect the same by distress of goods, &c.

See assessors's estimate,	Record pages	10, 11.
" Warrant of Commissioner	" "	11, 12.
" Notice from Collector to the plff.	"	13, 14.

A preliminary injunction was granted by the State Court, and the action was removed into the Circuit Court of the United States by *certiorari*.

For a better understanding of the case we submit a copy of the pleadings. The operation and business of the plaintiff are stated more in detail in the bill of complaint than in the certificate of division, and are not put in issue by the collecter There were no controverted questions of fact upon the trial or in the case. The facts are substantially these:

The plaintiff was incorporated by special act of the Legislature of the State of New York, March 26th, 1819 A copy of the Act of Incorporation and copies of subsequent acts amending and modifying the same, are for convenience of reference annexed to and make a part of the *record, pages* 3 *to* 8.

The features which distinguish this corporation from most other corporations, even those exercising to some extent the same functions, and especially from *Banking corporations* and *associations*, are—

1st. It was incoporated not for private gain but upon the application of the Society for the prevention of pauperism in the city of New York.

See Preamble Record, page 3.

2d. It has no capital stock.

3d. It has no shareholders and no corporators interested in or entitled to participate in the profits of the institution.

4th. The only corporators are the "trustees" for the time being, who constitute the "Board of Managers." They are prohibited from directly or indirectly receiving any pay or emolument for their services, neither can they have any interest in the deposits or the profits arising therefrom.

5. It is prohibited from issuing notes, making discounts, or transacting any business which belongs to or is transacted by incorporated banks other than is specified in the act, and from loaning money "upon notes, bills of exchange, drafts, or any other personal securities whatever."

See § 1 of Charter, page 4.
Laws of New York, 1853, Ch. 257, § 6.

6. It is enjoined and required to use the funds entrusted to it, and exercise the powers conferred solely for the promotion of the objects stated in the preamble to its Charter, viz.: "encouraging in the community habits of industry and economy, by securing and investing in Government securities or stock created and issued under and by virtue of any law of the United States, or of this State, *and in no other way, such small sums of money as may* BE SAVED *from the earnings of tradesmen, mechanics, laborers, minors, servants, and others,* thereby

affording the two-fold advantage of security and interest."

It was designed as a benevolent institution, as declared in the preamble, " to ameliorate the condition of the poor and laboring classes of the community," and it has faithfully discharged its duty, and performed the services required.

Subsequently power was given to invest in the debt of the city of New York, and to loan upon bond secured by mortgage upon unincumbered real property in the city of New York.

See Preamble, Record, pages 3, 4, and last proviso to § 1 of Charter.

7. *All the profits* derived from the business are divided *rateably semi-annually* among the depositors, except that a small per centage is permitted to be retained for accumulation, to prevent or to make good any loss to the depositors by reason of a reduction in the market price of securities or stocks held below the par value.

Charter, § 2 ; also Certificate, fol. 4.
Act of 1831. (Record, page 7.)

8. Money, when received, is entered in a pass book, which, when presented, is a voucher or warrant for payments made by the plaintiff and entered therein, and the Corporation can only be called upon to make payments either of principal or profits on *four stated days* in the year, and then only *upon a week's notice* of the intended call.

See By-Law, § 8, Ch. 4. (Record, page 9.)

9. All the money received by the plaintiff under the Charter is, and at all times has been, either actually invested in stocks or loaned on bond and mortgage, as authorized, *except* some small sum which is kept on deposit in a bank of deposit in the city

for current expenses, or waiting an opportunity to invest. So that all the money which the plaintiff has on hand at any time is on deposit as an ordinary deposit subject to ckeck or draft in a *bank of deposit*, an institution properly "engaged in the business of banking," where it pays the tax now demanded of the plaintiff.

See Certificate, fols. 3, 4.

10. No person, "except in rare and special cases," is allowed to have with the Corporation, moneys amounting in the aggregate to more than $1,000, and in no case can the amount exceed $5,000, and those having less than $500 with the plaintiff, are, by law, entitled to receive one per cent. more of the profits than the others—making it, in fact, the poor man's institution and agent.

See Certificate, fol. 4.
See By-Laws, Ch. 4, § 2. (Record, page 8.)
See Act of 1836, § 5. " "

11. A large proportion of the depositors have incomes much less in amount than $600 per annum, and are not liable to pay an income tax.

Certificate, fol. 4.

12. Courts are enjoined to construe the act of incorporation favorably and benignly for every beneficial purpose therein intended.

The Legislature thus placing this plaintiff on the same footing with the other charitable and benevolent public institutions of the State.

Charter, § 7.

13. The Corporation is subject to visitation by State Officers.

14. The accountant of the plaintiff is authorized to administer oaths, and thus act *quasi* judicially

> when "necessary, to carry into effect the true intent and object for which the institution was incorporated."

It is not claimed that the plaintiff has exceeded its powers, or violated the laws of its creation.

It has strictly confined its business to the purposes of its creation, and conducted it as prescribed by its Charter.

See Certificate, fol. 3.

> Upon this statement of the powers conferred upon the plaintiff, the character, course and conduct of its business, and the relation it bears to those interested in its profits, the main question, and upon which all the others hinge arises, viz. :
>
> Are those moneys, thus received for investment, and actually invested, or permantly loaned for the sole benefit of the owners, and repaid with the profits, if any have been earned, at stated periods upon notice, upon a prescribed voucher, and upon presentation of the "pass-book" as a voucher, taxable as "deposits with a person or Corporation engaged in the business of banking," under §110 of the Internal Revenue Act."

The other questions are unimportant. If the decision upon the merits is adverse to the plaintiff, the injunction necessarily falls, and if adverse to the defendant (and the United States, as represented by him,) there will be no attempt to enforce the collection of the tax. The questions, as to the injunction, are, therefore, as presented here, abstract questions without particular interest.

The third and fourth questions are substantially the same expressed in different terms, and must receive the same answers.

The question upon the merits is important, not as affecting "Monied Corporations," or wealthy individuals or associations, but as reaching the substance and small accumulations of the industrious poor who need, and are entitled to the fostering care of the Government, and who, while they are the most reliable support of the State, are in no situation, and who are not expected to share very largely in its pecuniary burthens. The policy of the law has exempted them from such contributions.

The proposition is to take one-half per cent. per annum from the little savings invested in Government Securities, or permently loaned on bond and mortgage, through the agency of the plaintiff, when the same investments are not taxed when made through other agencies.

Because they cannot, for very obvious reasons, make their own investments wisely, or well or look after them when made, they are compelled to avail themselves of institutions and agencies like that of the plaintiff, and for this they pay to the Government five per cent. upon all the earnings and income of their investment which they would not be compelled to pay as their incomes are generally less than $600 per annum, if they could invest their money themselves. Of this they do not complain, but they do object to the taking of a part of their little capital.

The number and character of the class, and the pecuniary interest to be affected by the decision will appear from a brief statement, believed to be accurate compiled from *The Bankers' Magazine*, for July, 1865.

In the State of New York there are seventy-three Savings Banks.

Total Deposits........................	$111,793,425
Number of Depositors................	456,721

Average amount of savings belonging to each depositor $244 and a fraction; and about *one* depositor to every *nine* of the inhabitants.

In the New England States, there are two hundred and twenty-two Savings Banks.

Total Deposits....................	119,382,941
Number of Depositors..................	527,090

Average amount of savings belonging to each depositor *two hundred and twenty-six dollars* and a fraction.

The plaintiff had in 1865, 13,071 new depositors, of whom 5,905 were married women, minors &c; 300 washers; 571 seamstresses; 798 laborers; 1,534 domestics, &c., &c. About four-fifths of the deposits, for the year, were made in sums less than $100.

The annual per centage of increase in savings, fostered and encouraged, if not in truth, wholly induced by these institutions, has been very great within the last few years.

In New England it was thirty per cent. from January, 1862, to January, 1865.

In New York, the per centage was greater.

A reference to the savings of Great Britain, in comparison with those in New England and New York, will show the beneficial workings of savings institutions, and that the true policy of the Government is not to burthen them with taxes of any description.

Great Britain, with a population of 30,000,000, has aggregate savings deposits equal to $190,494,406, or about 6.33 per head.

New England and New York, with a population of 7,500.000, has an aggregate savings deposit of $231,176,366, *or about thirty dollars per capita.*

It will not be denied that the greater part of these

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savings are the fruits of institutions for savings, and that the labors, mechanics, married woman, and infants, to whom they belong, would, but for the facilities for investment for accumulations of small sums thus afforded, have parted with them as they were earned, and the State would have been the looser, the individuals so much the poorer, and the habits of thrift and good morals would have lacked the encouragement they now have.

◆

POINTS AND BRIEF.

I.—Nothing is to be taken by inference or implication against the plaintiff in the construction of the Act of Congress imposing the tax sought to be levied and collected.

(1.) Every Act imposing a burthen or tax upon the citizen is to be strictly construed against the Government and liberally in favor of the citizen. Acts of that character are never construed beyond the natural import of the language, and the benefit of every doubt is given to the citizen.

Adams *vs.* Bancroft, 3 Sumner, 387.
Taylor *vs.* United States, 3 How., 109.
Hubbard *vs.* Johnston, 3 Taunt., 177.
Dwarris on Stat., 641.
Rawdon *vs.* Gibbs, 1 B. & C., 319, 324.
Gray *vs.* Shilling, 2 *ib.*, 30.

This Act will not be extended by implication.

Brittano *vs.* Campfield Canal Co., 2 B. and Ald., 139.
Leeds and Liv. Canal Co. *vs.* Hutton, 1 B. & C., 424.
Carter *vs.* Holmes, 2 B. and Ald., 593.

The application of the Act will be restricted to cases within its spirit as well as its words.

Shomaker *vs.* Laning, 17 Wend. R., 327.
Hawkins *vs.* Clutterbuck, 2 C. & P., 810.

II.—Nothing is to be taken against the plaintiff by reason of the name given to it in the Act of Incorporation or that used to designate the moneys placed with it for the purposes authorized by its charter.

Both are matters of convenience and do not give character to either, and whether fitly chosen is not material.

They mislead no one. The character of the institution, its business, and the relations existing between the plaintiff and those availing themselves of its agency in respect to the moneys placed with it must be determined by the services rendered, and the business transacted, rather than by any name which by accommodation and for convenience is employed, either by the legislature, the public, or the party. But "Bank for Savings" is not an inappropriate name. It is a "common depository for the money of individuals." But the money does not become a "joint fund" as in the case of a contribution by stockholders to a common fund to be used as capital for the joint benefit of all. Neither is it a place for the deposit of money as that term is understood in business, to be refunded in other money on call. Hence, the institution is distinguished from ordinary banking corporations by the affix "for savings." That is "a common repository for the savings," of the small savings of the poorer classes. The use of the money, as authorized and practiced, must determine whether it has or exercises "banking powers."

Again, the word "deposit," is not entirely inappropriate, although not strictly accurate. In commerce, as applied to money, it has acquired a popular meaning which will be referred to hereafter. A "deposit," in a larger sense and in law, is a "naked bailment," a delivery of money or goods to the bailee, to be kept for the bailor.—*Bouvier's Dic.* *Edwards on Bailments*, 35, 47–8.

If the terms of the contract and purpose of the deposit create a different relation, a reference to such contract and purpose, must determine whether it is an ordinary "banking" or "commercial deposit" of money; or whether it is special, creating a special relationship, as that of trustee and *cestui que trust*, rather than that of debtor and creditor, or bailor and bailee.

The purposes of the "deposit" with the plaintiff, are prescribed by the charter; and the terms "deposit" and "depositor," are qualified and explained by those purposes. They were used by way of accommodation and for convenience, not intended to declare the relation existing between, or the rights or liabilities of the respective parties.

III.—It is for the defendant asserting the right to take the property of the citizen (the individuals represented by the plaintiff,) *in invitum*, under color of process issued by an executive officer, claiming to act under a special authority or power conferred by statute, to bring the case within the Act, and show that the plaintiff is within the letter, as well as the spirit of the Act, liable to the tax, and that the proceedings have been in all respects regular, and in strict conformity to the Statute. There are no presumption to be indulged in his favor.

Gilbert *vs.* Columbia Turnpike Co., 3 Johns. Cas., 107; 4 Burrows, 2244; 1 *Ib.* 377. Cowp., 26; Sharp *vs.* Speir, 4 Hill, 76; Striker *vs.* Kelly, 2 Denio, 323; Doughty *vs.* Hope, 3 Wend., 594; S. C., 1 Comst., 224. Woodruff *vs.* Fisher, 17 Barb., 224.

This he has failed to do, either by his answer or by evidence upon the trial. On the contrary, the admission in the answer, and the facts appearing upon the trial, take the plaintiff out of the provisions of § 110 of the Internal Revenue Act, under which the assessment purports to have been made.

(1.) The money received by the plaintiff and invested, or permanently loaned upon mortgage of real property, for the exclusive benefit of the owners, is not within the terms employed to designate the subject of taxation, viz.: "*deposits of money subject to payment by check or draft, or represented by certificates of deposit, or otherwise payable on demand, or at some future day.*"

(*a.*) They are not "deposits of money," in the ordinary sense of that term, as used in commerce and applied to banking business; and the term must be held to have been used in the ordinary and popular commercial sense, unless the intent appears upon the face of the Statute to employ it in a different sense, and give it another meaning.

Hallowell *vs.* Morrell, 1 Scott's N. R., 482.
Broome's Leg. Max., 238 to 249.

A "deposit of money" with a banker, is a bailment of money, to be returned in specie or other money on call

Bouvier's Dic., "Banker."
Curtiss *vs.* Leavett, 15 N. Y. R., 9, 166, 168.

(*b.*) If "deposits of money," they are not subject to payment by "check or draft."

They are payable in the form, and upon the vouchers prescribed by the By-laws of the Company which form a part of the special contract with each depositor. "Checks and drafts," are well known, coommercial instruments. They are used as a substitute for coin or money to a large extent in business transactions, and take the place of bank circulation, and give the "deposits" upon which they are based a peculiar value. A "pass-book," held by the seamstress or mechanic, carries with it no such business value or use, and cannot in any way be assimilated to, or classed, with "checks or drafts."

If this character is wanting, then the deposits are not within the provisions of the section referred to (110), unless

(*c*) They are, represented by certificates of deposits *or otherwise payable* on demand, *or at some future day*," and we submit *they are not so* "*represented*."

"Certificates of deposit" are evidences of debt to the amount named in them. They are the admission of the receipt of the sum specified, and promise to pay the same on demand, or at a day specified. They, like checks, may and do pass from hand to hand, and take the place of currency, or other commercial paper for a sum certain. No such or equivalent instrument is given by the plaintiff, nor are they represented "otherwise;" that is, by an instrument or voucher of a similar or analagous character, and answering the same purpose as a "certificate of deposit."

"Otherwise" means, as used here, some instrument of the like character and effect as that named. The general words are controlled by the particular words used. But if "otherwise" should be held to include any and every possible voucher, then we submit that neither "the moneys deposited," nor any other specified sum is payable, either on demand or at any future day.

The money is received for investment, and the plaintiff is only liable to account. The special contract evidenced by the entry in the "pass book," creates a trust, and the relation of trustee and *cestui que trust*, between the plaintiff and the individuals availing themselves of its services, and the only rights and obligations springing out of the contract are those incident to the relation named. The money to which the *cestui que trust*, is entitled, may be more or less than the sum deposited, depending upon the result of the investments. The relation of debtor and creditor is not created and does not exist. A "deposit," in the ordinary sense, creates that relation, and a bailment or deposit which does not create that relation, is not a "deposit" within the act.

Commercial Bank of Albany *vs.* Hughes, 17 Wend. Rep., 94.
Chapman *vs.* White, 2 Seld., 412.
Graves *vs.* Dudley, 20 N. Y. R., 74.

2. If, upon any interpretation, the moneys placed with the plaintiff for investment and accumulation can be called "deposits," they are not deposits with a "person, bank association, or corporation *engaged in the business of banking*." In other words, the plaintiff is not "*engaged in the business of banking*," and therefore is not taxable for deposits.

(*a*) Banks are of three kinds: of *deposit*, of *discount*, and of *circulation;* and "banking business," as that term is understood in law and in commerce, is confined to those branches of business.

Ency. Am., art. Bank.

There is no claim that the plaintiff either "discounts" commercial paper, or issues notes for circulation.

The receipt of money, for the purposes and upon the trusts authorized, by the plaintiff's charter, is outside of the "business of banking." It is not such a business as is within a statute forbidding unauthorized banking.

N. Y. Rev. Stat., 712, § 6.
Mumford *vs.* Am. L. Ins. & T. Co., 4 Comst., 463.

This section (110) is its own interpreter. It is plain and unambiguous, and needs not a reference to the context, or any other aids to arrive at its proper meaning, and the rule is, "that is not to be interpreted which needs no interpretation."

Lieber's Pol. & Le. Hermenuties, 86, 87.
Newell *vs.* People, 3 Seld. Rep,, 97.

But if reference be had to other parts of the act, to aid in the construction and application of § 110.

(*b*) The plaintiff is not a banker as defined for the purposes of a license, and, as we contend, only in reference to a license by Subdivision 1 of § 79 of the Act.

1st. It is expressly excepted from the operation of that section, which is some evidence that it was not designed to subject institutions of this character to the burthens imposed upon "*banks.*"

2d. It is not within the description of persons and corporations named. It is not a *Bank*, and the words, "person, firm, or company," are used to designate natural and not artificial persons. When all corporations are included, more comprehensive terms are used.

See §§ 110, 120.

3d. It has not a place of business where "credits are opened by the deposit or collection of money or currency *subject to be paid or remitted upon drafts, checks, or order.*

4th. It does not advance or loan money on stocks, bonds, &c, It is prohibited so to do, and a loan on personal security of any kind would be a violation of its charter.

North River Ins. Co. *vs.* Lawrence, 3 Wend. R., 482.

It may "vest," that is, convert the moneys received, under its charter, into certain stocks, or "lend" them on bond and mortgage.

5th. It does not receive stocks, &c., for discount or sale.

IV.—The Statue must be construed and applied as if the clause stricken out of §110 by the Amendment of 1865 had never made a part of the proviso in which it was placed.

The section is simply to be read without that paragraph.

If the plaintiff is not within the provisions of the section imposing the tax the exception was as applied to it without meaning, and the striking it out did not give a new or different meaning or effect to the section as amended.

It was inserted *ex abundante cautela*, and stricken out as superfluous. Each Institution is now, as before, left to be taxed or not taxed on its "deposits," as it is or is not "engaged in the business of Banking."

V.—Violence would be done to the spirit and intent of the act by subjecting the moneys invested or loaned by the plaintiff or received by it for investment to the tax imposed by section 110.

(1.) The moneys on hand and not invested or permanently loaned, are kept on deposit with a "Bank of deposit" where it pays the monthly tax. It would not be conforming to the spirit of the Act to tax it as against the Bank where it is, and also as against the "Bank for Savings" where *it is not.*

(2.) The moneys actually invested or permanently loaned, are in no sense "deposits." They are invested in or loaned out on securities, each of which is subject to its appropriate burthens, and is not money on "deposit" in any sense.

(3.) These investments and loans which our adversaries seek to call "deposits," and the individuals beneficially interested in them, pay the appropriate tax under § 120, and the language of this section is high evidence that when the Legislature intended to tax Savings Institutions they were expressly named.

(4.) Under § 120, the *cestui qui trusts* are made to pay an income tax, although their incomes respectively are less than six hundred dollars per annum. It is unreasonable to suppose that in addition it was designed to take from the capital of the fund. The burthen of the act should not be extended beyond the clear intent of the Legislature.

See per Ch. J. Chase, Jackson *vs.* Northern Central Railway Co. Mss.

(5.) The design was to reach capital used in “banking business” by State institutions and by excepting National Banks from this burthen, to induce a change from a state to a national organization. Hence, the duty was imposed upon the *capital* of State Banks, and a like duty upon the “deposits,” which served them as capital, and was used as such and for the benefit of the shareholders.

Saving Institutions are not within the reason of the imposition, and not within its words, and are not therefore subject to the tax. They cannot organize under the general banking law of the United States, and the use and investment of the moneys in the way and manner indicated in nowise interferes with or conflicts with the well understood policy of the Legislature which led to this onerous tax apon the capital and deposits of “Banks” and “Banking Institutions” proper.

The “trustees” of the plaintiff are, in truth, but the trustees of the individuals owning the fund and for convenience are permitted to act in a corporate name.

If the same individuals should perform the same services as individuals associated together for this benevolent purpose, it would never have suggested itself to any one that they were bankers or “engaged in the banking business,” and that the funds of their beneficiaries were taxable as “deposits” with persons “engaged in the banking business.”

VI.—Corporations and associations for the transaction of “Banking business,” are recognized and treated as distinguished from “Banks for Savings.” The business of receiving, and investing, and loaning “savings” for the benefit of the individual is never regarded as any part of a "banking business," and the banks proper do not perform that service, and, ordinarily, are not permitted to do so. Public policy has not permitted the savings of the poor to be hazarded by the perils incident to commercial institutions and business.

(1.) Both State and National Legislatures recognize the distinctive features of the two classes of institutions. The one class may, under the laws of Congress and the laws of most of the States, be organized under general laws, and by the voluntary action of those desiring to associate for gain, and they choose their own trustees or directors. "Banks for Savings" are created by special charter, and the trustees or directors named by the Legislature, and provision is made for the filling of vacancies in the management by the board itself.

(2.) In all books and treatises, "Banks," and "Banks for Savings" are treated of as separate institutions, as distinct in all their characteristics as are "Banks" and "Insurance Companies."

It cannot be supposed that Congrsss intended to make an innovation, and so by the Internal Revenue Act, to comfound and make one two classes of institutions, always before regarded as entirely distinct, and having nothing in common between them, except a similarity of name.

VII.—The plaintiff is not within the reason or policy of any act imposing a duty or burthen upon Corporations, or individuals exercising a franchise, or upon capital employed for purposes of gain and profit.

(1.) It is not a commercial or business institution.

Its transactions do not enter into or make a part of the ordinary commercial transactions of life.

(2.) It has no capital and gain, and profit is not made to the Corporation or its managers.

(3.) It is pre-eminently and solely a benevolent institution—a public charity—gratuitously rendering valuable service to the public, to its employers, and to the State. No wise Government would ever tax an institution of this kind conducted upon these principles, and for the purposes which control the plaintiff. They stand on the same footing as schools, churches, orphan asylums, hospitals, and other institutions of a like character.

Every intendment is in favor of their exemption from a tax imposed upon capital used in the ordinary business of life, and for the gain and profit of the possessor.

VIII.—This is a proper case for an injunction. The remedy of the plaintiff is doubtful, and at best inadequate for any levy and sale of its property. Again, the wrongful act threatened by the defendant will be of frequent (monthly) repetition, and give rise to as many actions of tresspass as there shall be assessments and destraints in the future.

Another feature of this action and the proceedings of the defendant and the officers of the Revenue Department, make it a fit case for injunction. In addition to this tax, large penalties are claimed and assessed for non-compliance with the law, as understood by the defendant. From these penalties there is no relief, and their collection, as

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well as that of the tax, should be enjoined as a part of the final judgment.

2 Story's Eq. Jur., § 928.
Ib., § 825 and Seq.
Hilliard on Juj. 383.
The Toledo, &c. *vs.* Lafayette, 22 Indiana, 262.

As trustees, the plaintiff and the "Board of Managers" are entitled to the judgment of the Court, and to an injunction until the rights of the case can be determined.

It is submitted, that the questions should be answered in favor of the plaintiff.

W. F. ALLEN,
M. S. BIDWELL,
of Counsel for Plaintiff.

Supreme Court, 1

CITY AND COUNTY OF NEW YORK.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,
against
MAUNSELL B. FIELD.

Summons.—for relief.

U. S. Rev. Stamp
50 cents.
Cancelled.

To the above named Defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to 2 the said complaint on the subscriber, at his office, number 68 Wall street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will apply to the Court for the relief demanded in the complaint.

Dated N. Y., October 31st, 1865.

C. E. STRONG,
Plaintiffs' Attorney,
68 Wall street,
N. Y.

3 SUPREME COURT,

City and County of New York.

The Bank for Savings in the City of New York,
against
Maunsell B. Field.

City and County of New York, ss.:

The Bank for Savings in the City of New York, plaintiffs
4 in this action, by Charles E. Strong, their attorney, complain
of Maunsell B. Field, defendant in this action, and,
by this their complaint, show—

That the plaintiffs are a corporation, duly created by an act of the Legislature of the State of New York, entitled "An Act to incorporate the Bank for Savings in the City "of New York," passed on or about the twenty-sixth day of March, in the year one thousand eight hundred and nineteen.

5 That said act is preceded by a preamble in the words
following, to wit: "That whereas, The Society for the
"Prevention of Pauperism in the City of New York have
"petitioned the Legislature for an act of incorporation, for
"the laudable purpose of encouraging in the community
"habits of industry and economy, by receiving and vesting
"in Government securities or stock created and issued
"under and by virtue of any law of the United States, or
"of this State, and in no other way, such small sums of
6 "money as may be saved from the earnings of tradesmen,
"mechanics, laborers, minors, servants, and others, thereby
"affording the twofold advantage of security and interest.
"And the Legislature considering it their duty to cherish
"all laudable attempts to ameliorate the condition of the
"poor and laboring class of the community."

And the plaintiffs aver, that the facts stated in said preamble are true, and that said corporation was created and established, and that its affairs have since been conducted with

a view solely to humane and charitable objects, and not to 7
their profit.

That said act further provides, that the trustees or managers of said institution shall not, directly or indirectly issue any notes, make any discounts, or transact any business which belongs to, or is transacted by, incorporated banks, other than is in said act specified.

And also that the said association, so incorporated, should receive as deposits, from persons of the description contained in the preamble or recital aforesaid, all sums of
money that may be offered for that purpose, for the purpose 8
of being invested as aforesaid; and that it should be the duty of the Trustees aforesaid to regulate the rate of interest to be allowed to depositors, so that they shall receive a ratable proportion of all the profits of said bank, after deducting therefrom all necessary expenses authorized by said act to be incurred. As by said act will more fully and at large appear, and to which, for greater certainty, the plaintiffs pray leave to refer.

The plaintiffs further show, that the said act is still in
full force and effect, and has not been repealed or in any 9
way modified so as to change the essential features thereof, or to confer on the plaintiffs the authority to issue any notes, make any discounts, or transact any business which belongs to, or is transacted by, incorporated banks, other than is in said act specified.

The plaintiffs further show, that under and by virtue of the powers conferred on them by said act, they have continuously, from the passage thereof to the present time, performed and transacted the business therein specified, and no other; and that they have from time to time received such small sums of money as were tendered to them
by persons of the description contained in the preamble of 10
said act, and invested them in securities of a permanent charecter, and have repaid to them such sums, from time to time, when required, under the regulations hereinafter mentioned and which they were duly empowered to make, and that they have collected and received the interest on said permanent investments, and have paid over the whole thereof, in ratable proportions, to the persons to whom said deposits belonged, deducting therefrom only the necessary expense of the institution, and also the amount of a surplus

fund, not exceeding in amount ten per cent. on the whole amount lodged with the plaintiffs on deposit as aforesaid, which surplus fund the plaintiffs were authorized to accumulate and reserve, by an act of the Legislature of the State of New York, entitled "An Act in relation to Savings Banks," passed on or about the sixth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, to the end that in case of a reduction in the market price of the securities or public stocks held or to be held by the said banks, or any of them, below the par value there of, any loss to the depositors, by reason of such re duction, may be made good to them by means of said surplus fund.

And the plaintiffs further say, as they are advised by counsel and respectfully submit, that notwithstanding the use of the word *bank* as part of their corporate name or title, they are not a bank either in the ordinary and popular or in the legal sense of that word, but a charity.

And they further shew that they have not and have never had a capital stock; that no persons have ever stood to them in the relation of stockholders; that they have never declared a dividend, issued any notes or evidences of debt intended for circulation, or discounted any notes, or had any commercial paper commonly so called, or any but permanent investments such as they are allowed by law to hold, that is to say, public stocks and bonds secured by mortgage on improved real estate in the city of New York, estimated to be worth fifty per cent. beyond or above the amount loaned on its security. And that the trustees or managers of said corporation are, by the terms of the act aforesaid creating the same, forbidden to borrow or use the funds of the corporation, directly or indirectly, except to pay current expenses, and are, by the by-laws of said corporation prohibited from receiving, directly or indirectly, any pay or emolument for their services, as by said by-laws when produced will, on reference, more fully appear.

The plaintiffs further show, that, pursuant to their by-laws, which have been in force and acted upon for the period of ten years last past and upwards, every person depositing money with them for the first time receives from them a book commonly called a pass-book, in which the amount of such deposit is entered by one of their

clerks or officers; that such book must be produced by 15
such depositor at each deposit thereafter made by him, that
its amount may be in like manner entered therein; that
such depositor, if desiring to withdraw the whole or any
part of such deposit or deposits, or of any interest accrued
thereon, is, by the by-laws aforesaid and the uniform prac-
tice of the plaintiffs, required to produce said pass-book, in
order that the amount paid him may be entered therein;
and that no money is paid by the plaintiffs on any draft or
order signed by a depositor without the production of said
pass-book (which is expressly declared to be the sole 16
voucher of the depositor for all moneys deposited by him
with the plaintiffs), except only in cases of the loss of such
pass-book, and then, by a special order of the trustees afore-
said. That, by the terms of the contract between the plain-
tiffs and each of such depositors (which are embodied in the
by-laws aforesaid, signed by each person making his first
deposit with the plaintiffs and printed on all pass-books so
issued by them as aforesaid), the plaintiffs are not liable or
bound to pay any moneys to depositors except on a week's
previous notice in the manner therein specified, nor except 17
on the third Mondays in January, April, July, and Octo-
ber. As by said by-laws and regulations of the plaintiffs,
when produced, will more fully and at large appear, and
to which, for greater certainty, the plaintiffs pray leave to
refer.

And the plaintiffs say that they do not transact and have not transacted any business or exercised or claimed the right to carry on any business other than that hereinbefore stated and set forth, and that the same is not and never has been the business of banking.

The plaintiffs further show, that the number of persons 18
now having money on deposit with them is about fifty-six
thousand, and that the average amount of such deposits is
less than the sum of three hundred dollars. That by the
by-laws aforesaid and by the uniform practice of the plain-
tiffs, no depositor is allowed increase his deposit beyond
the sum of one thousand dollars, except in rare and special
cases in which it is made to appear that the depositor can
find no other investment or safe deposit for his earnings.
That the persons so depositing with the plaintiffs bolong, as

19 a body, to the poorer section or division of the laboring
class of the city of New York and its vicinity. And that,
as the plaintiffs are informed and believe, a very large
portion of the depositors aforesaid are in receipt of incomes
much less in amount than six hundred dollars per annum.

And the plaintiffs further show, that all moneys so
received by them on deposit as aforesaid, are kept invested
by them in permanent securities, except only a
comparatively small sum sufficient to carry on the current business
of the institution. And that the surplus before mentioned,
20 which consists of a small portion of the interest on the
deposits aforesaid, is held by the plaintiffs on the same trusts
as all other funds received by them, being reserved to
secure the depositors aforesaid against loss, and is invested
in securities of the same permanent character.

The plaintiffs further say, that their incorporation by the
Legislature of this State and the subsequent incorporation
of other institutions having a like object, have, in their best
judgment and belief, done much to effect the objects of
their incorporation, as set forth in the recital or preamble
21 of the act aforesaid, and have in a considerable degree
encouraged in the community habits of industry and economy,
and so meliorated the condition of the poor and laboring
class of the community. And they respectfully submit,
that on grounds of public policy their said act of
incorporation and the powers and duties thereby given them, and
all legislation affecting the interests of their depositors,
should be construed favorably and benignly, and so as not
to discourage the practice which has thus been made
general among the laboring class of depositing their surplus
earnings in institutions of this nature.

And the plaintiffs further show, that by an Act of the
22 Congress of the United States, entitled "An Act to provide
"Internal Revenue to support the Government, to pay
"interest on the public debt, and for other purposes," ap-
proved on the thirtieth day of June, one thousand eight
hundred and sixty-four, and by a certain other Act of the
Congress of the United States, entitled "An Act to amend
"an Act entitled An Act to provide Internal Revenue to
"support the Government, to pay interest on the public
"debt, and for other purposes," approved June thirtieth

"eighteen hundred and sixty-four," which last mentioned 23
act was approved on the third day of March, one thousand
eight hundred and sixty-five, it is enacted that certain
taxes or duties be imposed and levied on the circulation,
deposits, capital, dividends, and profits of every person,
bank association, company, or corporation engaged in the
business of banking, and that certain penalties and forfeit-
ures be imposed and levied on the assets and property of
the persons, banks, associations, companies, or corporations
engaged in the business aforesaid who shall fail to make
the returns they are by said acts directed to make, and to 24
pay the taxes or duties thereby imposed as aforesaid.

And the plaintiffs say, as they are advised and believe,
and respectfully submit, that the provisions in that behalf
contained in the acts aforesaid are inapplicable to them,
and constitute no authority or justification for the impo-
sition and levy of any tax on their corporate property and
assets, or of any fine, penalty, or forfeiture by reason of
their non-compliance with such provisions, or any of them,
because they are not and never have been engaged in the
business of banking, and have no corporate capacity to en-
gage therein, and because the equitable and beneficial
interest in all and singular their funds, property, and estate 25
of every name, nature, and description is not in them, the
said plaintiffs, but in their depositors, who are, as a class,
exempted from direct taxation by other provisions in the
acts aforesaid contained.

And the plaintiffs further show, that the defendant, being
or claiming to be duly appointed and commissioned as the
Collector of Internal Revenue for the Sixth District of the
State of New York, in the city and county of New York,
(within which district the building used and occupied by
the plaintiffs for their corporate purposes is situated,) sets 26
up and claims that the plaintiffs are in fact engaged in the
business of banking, and that the provisions of said acts, as
to persons, banks, associations, companies, and corpora-
tions engaged in the business of banking, are applicable to
the plaintiffs. That the defendant, as such collector, has
demanded of the plaintiffs payment of the sum for which
he, the said defendant, alleges they would have been liable
under the provisions of said act, had they been engaged in

27 the business of banking, and had the equitable and beneficial
interest in the moneys deposited with them, or any
part thereof, been in the said plaintiffs and not in their
depositors; which sum amounts to twenty-five thousand
dollars and upwards. That the defendant, as such collector,
threatens, in case said sum be not paid to him, to collect
the same from the assets and property of the plaintiffs by
forcible distraint and sale under the provisions of the acts
aforesaid. And that, on or about the twenty-third day of
October, one thousand eight hundred and sixty-five, the
28 defendant addressed to the plaintiffs and served on them a
notice in writing, of which a copy is hereto annexed,
marked A, which the plaintiffs pray may be taken as a
part of this their complaint.

The plaintiffs further shew that they have applied to the
defendant and requested him to procure a judicial determination
of the question, whether they are or are not justly
liable to pay him the several sums of money specified in
the notice aforesaid, out of the funds belonging to their depositors,
and lodged with them for safe keeping, by instituting
29 a suit against them the said plaintiffs in some Court
of competent jurisdiction, with which request the said
defendant has refused to comply. And that, as the plaintiffs
are informed and believe, said sums if paid by the
plaintiffs to the defendant, or if collected by him under
color of the powers given him by said acts to provide
Internal Revenue, would, in the ordinary course of the defendant's
official business, at once pass out of his hands and
into the hands of persons to the plaintiffs unknown. And
that, as they are informed and believe, the defendant is
unable to respond to the plaintiffs in damages for the
unlawful exercise and abuse, by him threatened as aforesaid,
30 of his official powers and authority. And that they
will therefore be without remedy at law against the defendant
should he proceed to carry into effect his design of
unlawfully collecting from the plaintiffs under color of
legal authority the said sums of twenty-five thousand dollars
and upwards upon the pretext aforesaid that the plaintiffs
are engaged in the business of banking.

The plaintiffs further respectfully aver and submit that as
they are advised and believe they hold all and singular

their property and estate of every name and nature and 31 description, as Trustees, and are expressly precluded by the Laws of the State of New York and by their own by-laws and regulations, from acquiring any beneficial interest therein and from receiving directly or indirectly any profit or emolument therefrom. That their cestui que-trusts, about fifty thousand in number, are generally in indigent circumstances, ignorant of their legal rights in the premises, and practically unable to assert those rights against the claims set up by the defendant. And that the plaintiffs as 32 such Trustees are, according to the ordinary course and practice of this Honorable Court, sitting as a Court of Equity, entitled to ask, by action or petition, for its interposition and its judicial instruction in the premises, and for the exercise of its extraordinary powers to prevent, by process of Injunction, the irremediable injury to their cestui-que-trusts, the depositors aforesaid, contemplated by the defendant, until such rights shall have been judicially ascertained and determined in due course of law. And that the plaintiffs, as such Trustees as aforesaid, cannot voluntarily pay the sum so claimed by the defendant, or 33 acquiesce in its collection by distraint, without incurring risk of personal liability to their said depositors and cestui-que-trusts for failure in their duty as Trustees.

The plaintiffs, therefore, demand that by the judgment of this Honorable Court in that behalf to be pronounced, the defendant may be perpetually prohibited and enjoined against setting up and insisting that the plaintiffs are engaged in the business of Banking, and liable under any law of the United States of America to any penalty or forfeiture imposed on persons, companies or corporations engaged in that business, and against any act designed to enforce such 34 supposed liability.

And that in the meantime and until judgment shall be entered in this action, the defendant shall be provisionally forbidden by the Injunction of this Court against setting up and insisting that the plaintiffs are engaged in the business of Banking and liable under any law of the United States of America to any tax, penalty or forfeiture imposed on persons, companies or corporations engaged in that business, and against any act designed to enforce such sup-

35 posed liability. And that they may have such other or such further relief as the nature of the case may require, and as to this Court may seem just, together with their costs by them in this behalf sustained.

CHAS. E. STRONG.
Atty. for Plffs.

City and County of New York, ss.:

36 James De Peyster Ogden being duly sworn, doth depose and say, that he is the comptroller of the Bank for Savings in the City of New York, the plaintiffs in the foregoing complaint named, and as such comptroller has the conduct and management of the business of said plaintiffs and is acquainted therewith.

That the foregoing complaint is true of his own knowledge, except as to the matters therein stated on the information and belief of the plaintiffs, and as to those matters he believes it to be true.

JAS. D. P. OGDEN.

Sworn before me, this 31st day of October, 1865.

37 E. G. DRAKE, Jr.,
Commisioner of Deeds.

(A.)

M. B. Field, Collector.

Collector's Office, U. S. Internal Revenue,
Sixth District, New York.
New York, October 21, 1865.

38 To the corporation known as "The Bank for Savings in the city of New York," and to the president thereof, Marshall S. Bidwell, Esq.

Whereas the above named corporation, situated in this Collection District, and which is required by the 110th section of the Act of June 30th, 1864, as amended by the Act of March 3d, 1865, to make returns of and payments of tax to the Commissioners of Internal Revenue, has refused and neglected to make returns of and payments of tax on the "average amount of the deposits of money held

by it subject to payment by check or draft, or represented 39
by certificates of deposit or otherwise, &c.," for and during
the months of April, May, June, July, and August, 1865,
and within the time required by law; and whereas by
reason of such neglect and refusal the Assessor of this
district has certified to the said Commissioner of Internal
Revenue the amount of such deposits, as provided by law,
And whereas the said Commissioner of Internal Revenue
has certified to me, in pursuance of the requirement of the
law, the amount of the tax due by the said corporation
known as "The Bank for Savings in the city of New
York," with the penalties and additions accruing thereon, 40
to be as follows, to wit:

For the tax on the average amount of deposits held during the month of April, 1865, less amount invested in U. S. Bonds...........	$3,399 58	
Penalty of 25 per centum for neglect to return above tax............................	849 90	
Penalty prescribed in section 110 for neglect to return and pay tax........................	200 00	
With all the penalties and expenses accruing to the Collector of the proper district.		41
		42
For the tax on the average amount of deposits held during the month of May, 1865, less amount invested in U. S. Bonds...........	3,441 24	
Penalty of 25 per centum for neglect to return above tax............................	860 31	
Penalty prescribed in section 110 for neglect to return and pay tax....................	200 00	
With all the penalties and expenses accruing to the Collector of the proper district.		
For the tax on the average amount of deposits held during the month of June, 1865, less amount invested in U. S. Bonds...........	3,529 15	
Penalty of 25 per centum for neglect to return above tax...........................	882 29	
Penalty prescribed in section 110 for neglect to return and pay tax....................	200 00	
With all the penalties and expenses accruing to the Collector of the proper district.		

43 For the tax on the average amounts of deposits held during the month of July, 1865, less amount invested in U. S. Bonds...........	3,466 64
Penalty of 25 per centum for neglect to return above tax..................................	866 66
Penalty prescribed in section 110 for neglect to return and pay tax........................	200 00
With all the penalties and expenses accruing to the Collector of the proper district.	
For the tax on average amounts of deposits held during the month of August, 1865, less amount invested in U. S. Bonds..........	$3,460 39
Penalty of 25 per centum for neglect to return above tax..................................	865 09
44 Penalty prescribed in section 110 for neglect to return and pay tax........................	200 00
Together with all the penalties and expenses accruing to the Collector of the proper district.	

Now, therefore, for the payment of the foregoing tax, with the penalties and additions accruing thereon, demand is hereby made.

If payment is not made to me within ten days from the personal service or mailing hereof, I shall proceed to collect the aforesaid tax with the penalties and additions accruing thereon by distraint and sale as provided in section 28 of the Act of June 30th, 1864, as amended by the Act of March 3d, 1865.

M. B. Field,
Collector.

UNITED STATES CIRCUIT COURT, 45

SOUTHERN DISTRICT OF NEW YORK.

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,
against
MAUNSELL B. FIELD.

The answer of Maunsell B. Field, defendant, to the complaint of the Bank for Savings in the City of New York.

This defendant, reserving to himself all right of exception to said complaint, for answer thereto saith:

That he is the Collector of Internal Revenue in and for the Sixth Collection District of the State of New York, 46 having been duly appointed and commissioned as such, by the President of the United States, prior to the commencement of this action.

And that as he is informed, and verily believes and charges, the plaintiff is an incorporated Savings Bank, within the usual and proper meaning of that term, and is a bank engaged in the business of banking, within the meaning of the seventy-ninth and one hundred and tenth sections of the act of June 30th, 1864, entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," as amended by the act of March 3d, 1865, and whose business consists in receiving upon deposit moneys subject to payment by check, draft, or order. 47

And the defendant, upon his information and belief, charges that heretofore and prior to and during the months of April, May, June, July and August, eighteen hundred and sixty-five, one John F. Cleaveland was the Assessor of Internal Revenue, duly appointed and commissioned by the President of the United States, in and for the collection district aforesaid, within which district the plaintiff's place of business is located, and that it was the duty of the plaintiff, by law, to make to the Commissioner of Internal Revenue and the said assessor monthly returns of the average amount of the deposits of money held by it subject to pay-

48 ment by check or draft, or represented by certificates of deposit or otherwise, in order that the proper rate of duties or tax which the plaintiff is by law liable to pay, by reason of its business aforesaid; and the deposits held by it during each of said months might be duly and properly ascertained or assessed, and the amount thereof paid to said Commissioner of Internal Revenue.

But the defendant charges, that, notwithstanding its duty in this respect, the plaintiff neglected and refused to make such return to the Commissioner of Internal 49 Revenue, or the said assessor, for either of the months aforesaid; whereupon it became the duty of the said assessor to estimate, and he did, upon the best information he could obtain, estimate the average amount of the plaintiff's deposits, less the amount invested by it in United States bonds, for and during the months aforesaid, and transmitted a certificate of such estimate to the Commissioner of Internal Revenue, a copy of which certificate is hereunto annexed, marked Exhibit "A," and to which defendant prays leave to refer as part of his answer.

50 Whereupon the defendant, as such collector, was expressly commanded by the Commissioner of Internal Revenue, in a certain letter hereunto annexed, marked Exhibit B, to which defendant prays leave to refer as part of his answer, to proceed to the collection of the certain amounts therein stated, by distraint and sale of the plaintiff's property.

And defendant admits the sending of the notice referred to in the complaint, and that it was his intention to proceed, as in said notice stated, to the collection of the amounts so assessed and certified to be due, and that he would have 51 done so, had he not been restrained by an injunction heretofore issued from the Supreme Court, before the removal of this case, by *certiorari*, into this Court, a copy of which injunction is hereto annexed and marked Exhibit C, to which he prays leave to refer as part of this answer; and he now claims and charges that said taxes and penalties are lawful and right and due and owing to the United States; and that he is advised and believes that the issuing of said injunction was unlawful, it not being within the legal or equitable jurisdiction or power of said Supreme Court to issue, or (as he respectfully submits under such advice) of this Court to maintain said injunction.

And the defendant, further answering, says, that he is a 52
stranger to the matters stated in the complaint concerning
the object, incorporation, and rules and regulations for the
management of the business of the plaintiff, but he believes
the statements therein made to be true, although he is
advised that they are not material or necessary to be answered
by him; and he avers, upon his information and belief,
that the sums deposited with the plaintiff are represented
by entries made by the plaintiff's agents for receiving such
deposits, at the time of the deposit in certain books
belonging to and retained by the respective depositors, which are 53
the same books referred to in the complaint and there
denominated "Pass books;" and the sums deposited are
subject to be paid on either the check, or draft, or order of
the depositor.

And the defendant, further answering, says, that he is
advised that, whether or not, the plaintiff is without
remedy in this case, except by injunction restraining the
defendant from collecting the tax and penalties in question,
is a question of law, and that the allegations in that behalf
in the complaint contained are not material or necessary to 54
be answered herein.

And this defendant denies all and all manner of
unlawful combination and confederacy wherewith he is by the
said bill charged, without this, that there is any other
matter, cause or thing in the said complainant's said bill of
complaint contained material or necessary for this
defendant to make answer unto, and not herein and hereby well
and sufficiently answered, confessed, traversed and avoided,
or denied, is true to the knowledge or belief of this
defendant; all which matters and things this defendant is 55
ready and willing to aver, maintain, and prove, as this
honorable Court shall direct, and humbly prays to be hence
dismissed, with his reasonable costs and charges in this
behalf most wrongfully sustained.

MAUNSELL B. FIELD.

United States District Attorney,
Solicitor for Defendant, and
GEO. P. LOWREY,
Of Counsel.

56 UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

On this 30th day of November, 1865, before me came Maunsell B. Field, the defendant, who makes the foregoing answer, and who had signed the same, and, being sworn by me, did depose and say, that he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believed it to be true.

57 [SEAL.] In testimony whereof I have hereunto subscribed my name and affixed my official seal the day and year aforesaid.

GEORGE W. JAQUES,
Notary Public,
N. Y. City.

U. S. Rev. Stamp
5 cents, cancelled

EXHIBIT A.

U. S. ASSESSOR'S OFFICE,
6th DISTRICT OF NEW YORK.
New York City, September 25th, 1865.

HON. WILLIAM ORTON,
Commissioner of Internal Revenne,
Washington:

58 Sir,—The corporation known as "*The bank for savings in the city of New York*" of which Marshall S. Bidwell is president, James F. De Peyster, treasurer, James De Peyster Ogden, comptroller, and Robert Lennox Kennedy, secretary, has, as I verily believe by the action of its board of trustees and its officers above named, neglected and refused to make return of the "*average amount of the deposits of money subject to payment,*" *&c.*, and liable to tax, under Sec., 110 of the Act of Congress entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes,"

approved June 30th, 1864, and the act amendatory thereto, 59
approved March 3d, 1865. Now, therefore, in accordance with the provisions of section 28, of said act, as amended March 3d, 1865, as aforesaid,

I do hereby certify, that from the best information I have been able to obtain, and which information I believe to be substantially correct, the average amount of deposits held by said bank and "subject to payment by check or draft or represented by certificates of deposit or otherwise during each month, from April, eighteen hundred and sixty-five, to August, eighteen hundred and sixty-five, both months inclusive, and the tax due thereon to be as follows, to wit:

On the average amount of deposits so held during the month of April, 1865...	$12,674,496			60
Less amount invested in U. S. stocks and bonds..	4,515,500			
	$8,158,996	*a* $\frac{1}{24}$	$3,399 58	
On the average amount of deposits so held during the month of May, 1865....	$12,774,496			
Less amount invested in U. S. stocks and bonds..	4,515,500			
	$8,258,996	*a* $\frac{1}{24}$	$3,441 24	
On the average amount of deposits so held during the month of June, 1865....	$12,985,446			61
Less amount invested in U. S. stocks and bonds..	4,515,500			
	$8,409,946	*a* $\frac{1}{24}$	$3,529 15	
On the average amount of deposits so held during the month of July, 1865,....	$12,835,446			
Less amount invested in U. S. stocks and bonds..	4,515,500			
	$8,319,946	*a* $\frac{1}{24}$	$3,466 64	

62 On the average amount of deposits so held during the month of August, 1865..	$12,820,446	
Less amount invested in U. S. stocks and bonds..	4,515,500	
	$8,304,946 a $\frac{1}{24}$	$3,460 39
		17,297 00

All of which is respectfully submitted, subject to such additions, penalties and costs, as in your judgment ought to be added.

(Signed) J. F. Cleveland,
Assessor.

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63 **Exhibit "B."**

Treasury Department,
Office of Internal Revenue,
Washington, October 13th, 1865.

To the Collector of Internal Revenue for the Sixth Collection District of the State of New York:

Whereas, the corporation known as "The Bank for Savings in the city of New York," situated in the sixth collection district of the State of New York, and which is required by the 110th section of the act of June 20th, 1864, as amended by the act of March 3, 1865, to make returns of and payments of tax to the commissioner of
64 internal revenue, has refused and neglected to make returns of and payments of tax on the average amount of the deposits of money held by it, subject to payment by check or draft, or represented by certificates of deposit or otherwise, for and during the months of April, May, June, July and August, 1865, and within the time required by law.

And, whereas, by reason of such neglect and refusal, the assessor of said district has estimated and certified to me the amount of said deposits, as provided by law, to wit:

For the month of *April*, 1865, average amount of deposits held, less amount invested in U. S. bonds................	$8,158,996

For the month of *May*, 1865, average am't of deposits held, less amount invested in U. S. bonds	$8,258,996	65
For the month of *June*, 1865, average amount of deposits held, less amount invested in U. S. bonds	8,469,946	
For the month of *July*, 1865, average amount of deposits held, less amount invested in U. S. bonds	8,319,946	
For the month of *August*, 1865, average amount of deposits held, less amount invested in U. S. bonds	8,304,946	

Now, therefore, I do hereby, in pursuance of the require- 63 ments of the law, certify the amount of the tax due by the said corporation, known as "The Bank for Savings in the city of New York," with the penalties and additions accruing thereon, to be as follows, viz :

For the tax on average amount of deposits held during the month of *April*, 1865, less amount invested in U. S. bonds	3,399 58
Penalty of 25 per centum, for neglect to return above tax	849 90
Penalty prescribed in sec. 110, for neglect to return and pay tax	200 00
With all the penalties and expenses accruing to the collector of the proper district	
For the tax on average amount of deposits held during the month of *May*, 1865, less amount invested in U. S. bonds	3,441 24
Penalty of twenty-five per cent. for neglect to return above tax	860 31
Penalty prescribed in sec. 110, for neglect to return and pay tax	200 00
With all the penalties and expenses accruing to the collector of the proper district.	
For the tax on average amount of deposits held during the month of *June*, 1865, less amount invested in U. S. bonds	3,529 15

68	Penalty of twenty-five per cent. for neglect to return above tax	$882 29
	Penalty prescribed in sec. 110, for neglect to return and pay tax	200 00
	With all the penalties and expenses accruing to the collector of the proper district.	
	For the tax on average amount of deposits held during the month of *July*, 1865, less amount invested in U. S. bonds	3,466 64
69	Penalty of 25 per ct. for neglect to return above tax	866 66
	Penalty prescribed in Sec. 110, for neglect to return and pay tax	200 00
	With all penalties and expenses accruing to the collector of the proper district.	
	For the tax on average amount of deposits held during the month of *August*, 1865, less amount invested in U. S. Bonds	3,460 39
	Penalty of 25 per ct. for neglect to return above tax	865 09
70	Penalty prescribed in Sec. 110 for neglect to return and pay tax	200 00

With all the penalties and expenses accruing to the Collector of the proper district.

Which sums you are required to collect by distraint and sale as provided in Section 28, Act. June 30, 1864, as amended by the Act of March 3, 1865.

(Signed) William Orton,
Commissioner.

Exhibit "C." 71

At a Special Term of the Supreme Court of the State of New York, held at the City Hall, in City of New York, on the 1st day of November, in the year one thousand eight hundred and sixty-five.

Present—Hon. Geo. G. Barnard, Justice.

The Bank for Savings in the City
of New York 72

against

Maunsell B. Field.

It satisfactorily appearing to the Court by the complaint
of the plaintiffs in the above entitled action, duly verified,
that the plaintiffs are entitled to the relief demanded therein,
and that such relief consists partly in enjoining and re-
straining the defendant from the collection of the tax, with
the penalties and additions accruing thereon, mentioned 73
and referred to in the said complaint, the collection of
which, during the pendency of this action, would produce
injury to the plaintiffs. And the plaintiffs having filed the
undertaking required by law, with sufficient security ap-
proved by this Court, whereby they undertake to pay to
the defendant such damages not exceeding the sum of fifty
thousand dollars, as he may sustain, by reason of such in-
junction, if the Court should finally decide that the plain-
tiffs are not entitled thereto. 74

Now, on motion of W. F. Allen, Esq. of counsel for the plaintiffs: It is ordered, that the defendant in this action be, and he is hereby enjoined and restrained until the further order of this Court from setting up that the plaintiffs are liable, under any law of the United States of America, to any tax, penalty, or forfeiture, imposed on persons, companies or corporations engaged in the business of banking or from the commission of any act designed to enforce

75 such supposed liability, or from the collection of the tax, with the penalties and additions accruing thereon, mentioned and referred to in the plaintiffs' complaint.

(Signed) GEO. G. BARNARD,
Justice of the
Supreme Court.

SUPREME COURT

OF THE UNITED STATES.

76

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,

against

MAUNSELL B. FIELD.

On a certificate of division between the Judges of the Circuit Court of the United States for the Southern District of New York. 77

UNITED STATES OF AMERICA,
Southern District of New York.

NOVEMBER TERM—1865.

At a Circuit Court of the United States for the Second Circuit, begun and holden at New York on the First day of December, A. D. 1865, before the Honorable Samuel Nelson, Associate Justice, and the Honorable Chas. L. Benedict, District Judge.

78

THE BANK FOR SAVINGS IN THE CITY OF NEW YORK,

vs.

MAUNSELL B. FIELD.

This is an action brought against the defendant, who is collector of internal revenue in and for the Sixth Collection 79 District of the State of New York, to restrain the collection of certain taxes and penalties claimed by him to be due to the United States from the plaintiff, under and by virtue of the Act of Congress passed June 30th, 1864, entitled, "An Act to provide Internal Revenue to support the Government, to pay interest on the public debt, and for other purposes," and the Act amending the same, approved March 3d, 1865. 80

The facts proved or admitted are: That the plaintiff was incorporated by special Act of the Legislature of the State of New York, passed March 26th, 1819, entitled, "An Act to incorporate an association by the name of a Bank for Savings in the city of New York," and has from that time done business in the city of New York, under the said Act, and the Acts entitled as follows, to wit: "An Act concerning the Bank for Savings in the city of New York," passed March 24th, 1820; 81 "An Act relative to the Savings Bank in the city of New York," passed March 29th, 1827;" "An Act for the relief of the Bank for Savings in the city of New York," passed March 29th, 1830, "An Act concerning the Bank for Savings in the city of New York," passed April 23d, 1831;" an Act in relation to the Bank for Savings in the city of New York·" passed April 23d, 1836; 82 "An Act in relation to deposits by Banks for Savings," passed December 15th, 1847. Copies of said Charter, and several Acts, are hereto annexed.

The said corporation has no capital stock, and no shareholders, and has performed and transacted the business and rendered the services mentioned in the preamble to the charter, and in the manner prescribed by the said charter, and the said several Acts of the Legislature. 83

That on receiving money for the purposes mentioned in its charter, the same is entered in a pass-book furnished to the depositor and retained by him or her, and the said money, or any part thereof, or the accumulations and profits thereof, can only be obtained at four stated periods in the year, and upon giving a week's notice of the intended call, and then upon the presentation of the pass-book, that the payment may be entered therein. In case of a loss or acci-

84 dental destruction of the pass-book, money can be paid as upon a production of the pass-book, upon the presentation of certain proofs prescribed by the by-laws of the corporation. All payments are made in accordance with the provisions of the by-laws, (Sections 3, 4, 6, 7, 8, and 9 of chapter 4,) copies of which are hereto annexed.

The moneys received by the said corporation, under their said charter and the said Acts are, and at all times have been, with the exception of a small sum, kept on deposit in one of the city banks for current expenses, or wait-
85 ing an opportunity to invest, either actually invested in some of the stocks authorized by the said Acts of the Legislature, or loaned on bonds secured by mortgage on real property, in the city of New York. All the profits of the said corporation are divided rateably among the depositors semi-annually, after deducting the necessary expenses authorized by the charter, and the percentage allowed by law to be accumulated, "to the end that in case of a reduction in the market price of the securities, or public stocks held by the said corporation below the par value thereof,
86 any loss to the depositors by reason of such reduction may be prevented or made good." Such percentage is invested as the other funds of the corporation are invested as aforesaid.

No depositor is allowed to have deposits amounting in the aggregate to more than $1,000, "except in rare and special cases in which it is made to appear that the depositor can find no other investment or safe deposit for his earnings." A large portion of the depositors have incomes much less in amount than $600 per annum.

87 It appeared, also, that the plaintiff had neglected and refused to make any return to the Commissioner of Internal Revenue, or the Assessor of the District of the average amount of the deposits for the months of April, May, June, July, and August, or any returns, and that the assessor has estimated the amount and certified the same to the commissioner, who directed the defendant to proceed to the collection of the tax due on the amount estimated, together with certain penalties, which certificate of the assessor and letter of direction from the commissioner are annexed hereto.

Prior to the commencement of this action the defendant 88
served on the plaintiffs a notice, a copy of which is annexed hereto.

The case coming on to be tried, the following questions occurred, upon each of which the opinion of the Judges were divided:

1. Whether the Circuit Court can restrain the collection of the said tax and penalties by injunction?

2. Whether an injunction can properly issue in this case?

3. Whether the plaintiff is under the 110th section of 89
the Act of June 30th, 1864, as amended by the Act of March 3d, 1865, liable to pay a duty of one twenty-fourth of one per cent. per month on the average amount of money so received and invested or loaned as aforesaid, and represented and entered in the pass-book as aforesaid, and payable to the parties entitled under and in pursuance of the 3d, 4th, 6th, 7th, 8th, and 9th sections of the by-laws of the plaintiffs.

4. Whether moneys so received and invested are deposits within the meaning of the Acts of Congress aforesaid.

5. Whether moneys received on deposit in any one
month and invested as aforesaid during the same month, 90
are deposits within the meaning of said acts, so as to
render the plaintiff liable to pay a tax thereon for such
month.

Whereupon, on motion of the defendant's counsel, that the facts on which the disagreement had happened may be stated under the direction of the Judges, and certified under the seal of the Court to the Supreme Court, to be finally decided, it is ordered, that the foregoing statement of facts which is made under the direction of the Judges, be certified according to the request of said counsel, and to the law in such case made and provided.

91
AN ACT

To Incorporate an Association by the name of a Bank for Savings in the City of New York.

[Passed March 26, 1819.]

Whereas the Society for the Prevention of Pauperism in
the City of New York have petitioned the Legislature for
an act of incorporation, for the laudable purpose of en-
couraging in the community habits of industry and economy,
92 by receiving and vesting in government securities, or stock
created and issued under and by virtue of any law of the
United States, or of this State, and in no other way, such
small sums of money as may be saved from the earnings of
tradesmen, mechanics, laborers, minors, servants and others;
thereby affording the two-fold advantage of security and
interest; and the Legislature, considering it their duty to
cherish all laudable attempts to meliorate the condition of
the poor and laboring class of the community. Therefore,

93 1. *Be it enacted by the People of the State of New York
represented in Senate and Assembly*, That William Bayard,
John Murray, Junior, Noah Brown, William Few, Brock-
holst Livingston, Cadwallader D. Colden, George Arcu-
larius, Thomas Buckley, Duncan P. Campbell, Benjamin
Clark, James Eastburn, Henry Eckford, Thomas Eddy,
Philip Hone, John E. Hyde, Peter A. Jay, Zachariah
Lewis, Denis McCarthy, Andrew Morris, James Palmer,
John Pintard, Abraham Russell, Jacob Sherred, Joseph
94 Smith, Najah Taylor, Jeremiah Thompson, William Wilson,
and Samuel Wood, shall be, and are hereby constituted a
body corporate and politic, by the name of "*The Bank for
Savings in the City of New York*;" and by that name
they shall have perpetual succession, and shall be persons
capable of suing and being sued, pleading and being im-
pleaded, answering and being answered unto, defending
and being defended, in all courts and places whatsoever;
and may have a common seal, with power to change and
alter the same from time to time; and shall be capable of
purchasing, taking, holding, and enjoying, to them and

their successors, any real estate, in fee simple or otherwise; 95
and any goods, chattels, and personal estate, which shall
be necessary for the purposes above recited, and of selling,
leasing, or otherwise disposing of the said real and personal
estate, or any part thereof, at their will and pleasure. *Pro-
vided always*, That the clear annual value of such real and
personal estate, exclusive of the profits that may arise from
the interest accruing upon the stock, or from the sale of
any stock in which the deposits made in the said bank may
be invested, shall not exceed the sum of five thousand dol-
lars; and that the trustees or managers of said institution 96
shall not, directly or indirectly, receive any pay or emolu-
ment for their services, nor shall they issue any notes,
make any discounts, or transact any business which belongs
to or is transacted by incorporated banks, other than is
herein specified. *Provided also*, That the funds of the said
corporation shall be used and appropriated to the promo-
tion of the objects stated in the preamble to this act, in the
manner herein mentioned, and those only.

2. *And be it further enacted*, That the said association, 97
so incorporated, shall receive as deposits, from persons of
the description contained in the recital to this act, all sums
of money that may be offered for that purpose, in such
sums and on such terms, for the purpose of being invested
as aforesaid; which shall be invested accordingly, and
shall be repaid to each depositor when required, and at
such times, and with such interest, and under such regula-
lations as the Board of Trustees, to be appointed as is here-
after mentioned, shall from time to time prescribe; which
regulations shall be put up in some public and conspicuous 98
place in the room where the business of the said corpora-
tion shall be transacted, but shall not be altered so as to
affect any one who may have been a depositor previous to
such alteration. No President, Vice-President, Trustee or
Accountant shall directly or indirectly borrow or use the
funds of the corporation, except to pay necessary current
expenses; and all certificates or evidences of deposit, made
by the proper officer, shall be as binding on the corporation
as if it were under their common seal. And the said corpo-
ration shall from time to time have power to make, consti-

99 tute, ordain and establish such by-laws and regulations as they shall judge proper, for the election of their officers, for prescribing their respective functions, and the mode of discharging the same, for regulating the times and places of meeting of the officers and trustees, and for the transacting, managing and directing the affairs of the institution. *Provided*, such by-laws and regulations are not repugnant to this act, to the constitution and laws of this State or of the United States. *Provided further*, that it shall be the duty of the Trustees of the said bank to regulate the rate of
100 interest to be allowed to the depositors, so that they shall receive a rateable proportion of all the profits of the said bank, after deducting therefrom all necessary expenses authorized by this act to be incurred.

3. *And be it further enacted*, That the officers of the said institution shall consist of a President and three Vice-Presidents, who, together with twenty-four Trustees, shall constitute a Board of Managers; five of whom, provided the President or one of the Vice-Presidents be present, as
101 sembling at the time and place designated for that purpose by any by-laws or regulations of the institution, shall constitute a legal meeting thereof.

4. *And be it further enacted*, That William Bayard shall be President; John Murray, Junior, first Vice-President; Noah Brown, second Vice-President, and William Few, third Vice-President; Brockholst Livingston, Cadwallader D. Colden, George Arcularius, Thomas Bulkley, Duncan P. Campbell, Francis Cooper, James Eastburn, Henry Eck-
102 ford, Thomas Eddy, Philip Hone, John E. Hyde, Peter A. Jay, Zachariah Lewis, Dennis McCarthy, Andrew Morris, James Palmer, John Pintard, Abraham Russell, Jacob Sherred, Joseph Smith, Najah Taylor, Jeremiah Thompson, William Wilson, and Samuel Wood, be the first Trustees, who shall constitute the first Board of Managers of said institution; and in case of a vacancy, by death, resignation or otherwise, among the said officers and Trustees, such vacancy shall be filled up by ballot by the Board of Managers, at their first regular meeting thereafter, and the person having the majority of the whole number present,

and voting, shall be considered as duly elected, and not 103
otherwise; and the said Board shall from time to time appoint a fit person as an Accountant to the institution, removable at pleasure, who shall give such reasonable security for his fidelity and good conduct as the Board of Managers may from time to time require; and they may, if necessary, appoint a clerk to assist him.

5. *And be it further enacted*, That the Board of Trustees shall have power to appoint a clerk or clerks, and such other officers and servants as they may deem necessary for
conducting the affairs of the institution, and to remove 104
them at their pleasure, and to appoint others in their places; and to fix the salaries of such clerks or other officers so appointed.

6. *And be it further enacted*, That it shall be the duty of this corporation to make an annual report to the Legislature, and to the Common Council of the city of New York, of the state of their funds.

7. *And be it further enacted*, That this act is hereby de-
clared to be a public act, and that the same shall be con- 105
strued in all Courts and places favorably and benignly for every beneficial purpose therein intended; and that no misnomer of the said corporation in any deed, gift, grant or demise, or other instrument of contract or conveyance, shall vitiate or defeat the same; provided the corporation shall be sufficiently described to ascertain the intention of the parties. *And provided, also*, that the Legislature may, at any time hereafter, amend or repeal this act, and dissolve the said corporation, or vary or modify its powers, as to them shall seem fit and proper.

106

AN ACT

Concerning the Bank for Savings in the City of New York. Passed March 24th, 1820.

1. *Be it enacted by the People of the State of New York,
represented in Senate and Assembly,* That it shall and may
be lawful for the Corporation called the Bank for Savings
in the City of New York, to vest moneys which they have
107 received, or shall receive, in the manner and for the pur-
poses mentioned in the act incorporating the said Bank, in
such government securities and stock as is mentioned in the
last aforesaid act, and also to loan the said moneys to the
Corporation of the City of New York, at a rate of interest
not less than six per centum per annum.

2. *And be it further enacted,* That it shall be lawful for
the said Corporation, at their discretion, to pay to any de-
positor, being a minor, such sums as may be due to such
108 depositor, not exceeding two hundred and fifty dollars, not-
withstanding that no guardian shall have been appointed
for such depositor, and that the receipt or acquittance of
such minor shall be as valid as if the same were executed
by a guardian of such minor duly appointed. *Provided,*
such deposit shall have been personally made by such de-
positor, and not by any other person, for his or her benefit.

3. *And be it further enacted,* That the books of the said
109 Corporation shall at all times be open to the Comptroller
of this State, and to such other person or persons as the
Legislature may from time to time delegate, for inspection
and examination.

AN ACT

Relative to the Savings Bank in the City of New York. Passed March 29th, 1827.

1. *Be it enacted by the People of the State of New York,*

represented in Senate and Assembly, That it shall and may 110
be lawful for the Corporation called the Bank for Savings
in the City of New York, to vest moneys which they have
received, or shall receive, in the manner and for the pur-
poses mentioned in the act incorporating the said Corpora-
tion, in any stock, for the redemption or payment of which
the faith of this State shall be pledged, or in any public
stock which hath been or shall be created and issued, under
and by virtue of any law of the State of Ohio, or in stock
which hath been or shall be created and issued by the
Mayor, Aldermen and Commonalty of the City of New 111
York; and also to loan money to the said Mayor, Alder-
men and Commonalty at such rate of interest, not exceed-
ing lawful interest, as shall be agreed upon between them.

AN ACT

For the Relief of the Bank for Savings in the City of New York. Passed March 29th, 1830.

The People of the State of New York, represented in
Senate and Assembly, do enact as follows: 112

1. It shall be lawful for the Corporation called, "The
Bank for Savings in the City of New York," in addition to
the powers granted by the act of incorporation, to vest
moneys which they have received, or shall receive, in any
stock or securities, for the redemption or payment of which
the faith of any State in the Union shall be pledged; or in
the bonds of the Corporation of the City of New York; and 113
also to loan any money to the Public School Society of
New York, on satisfactory real security; and also to make
temporary deposits in any of the incorporated banks in the
said city, and to receive interest thereon, at such rates, not
exceeding that allowed by law, as may be agreed upon.

2. The Accountant of said bank for the time being is hereby authorized to administer oaths, in all such cases where it may be necessary to carry into effect the true in-

114 tent and object for which the institution was incorporated,
and where such oaths shall be directed to be administered
by the by-laws of the Corporation.

AN ACT

Concerning the Bank for Savings in the City of New York. Passed April 23, 1831.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. The Board of Trustees of the Bank for Savings in
115 the City of New York are hereby authorized to accumulate
gradually, and hold invested, a surplus fund, not exceeding
three per cent. on the amount of deposits, to the end that
in case of a reduction in the market price of the public
stocks and securities held or to be held by the said Bank,
below the par value thereof, any loss to the depositors, by
reason of such reduction, may be prevented or made good
by means of the said fund.

2. The said Board of Trustees may from time to time
regulate the interest to be allowed to depositors, so that the
interest allowed to depositors having five hundred dollars or
116 more deposited with the said Bank, shall be at least one per
cent. less than the interest allowed to others; and so that no
interest or dividend on account of the said surplus fund shall
be allowed for moneys which shall have been withdrawn
from the Bank.

AN ACT

In Relation to the Bank for Savings in the City of New York. Passed April 23, 1836.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. It shall be lawful for the Corporation styled "The

Bank for Savings in the City of New York," in addition to 117
the powers heretofore granted, to loan any money which they have received, or shall hereafter receive, upon bonds secured by mortgages upon unincumbered real estate situate in the City of New York, worth at least fifty per cent. more than the sum loaned.

2. The Board of Trustees of the said Savings Bank are hereby authorized to accumulate gradually, and hold invested, a surplus fund, not exceeding ten per cent. on the
amount of deposits, to the end that in case of a reduction 118
in the market price of the securities or public stocks held or to be held by the said Bank, below the par value thereof, any loss to the depositors, by reason of such reduction, may be prevented or made good by means of said fund.

3. Instead of publishing a statement of the depositors of said Bank, as is required by the act entited "An act relative to unclaimed bank dividends and deposits, passed May 9, 1835," the said Bank shall report the statement by said
act required to be made to the Comptroller of the State, 119
before the first day of January, every fifth year, without designating the occupation and place of residence of the depositors. The first report of said Bank shall be made before the first day of January, one thousand eight hundred and thirty-eight.

4. The bank commissioners shall have power to visit and inspect the said Savings Bank whenever they may deem it necessary, or upon the requisition of the Comptroller, and
shall report to the Legislature its general condition not less 120
than once in every three years after the passage of this act.

5. No person shall make any deposit, or have any interest in any deposits, made at different times in said Bank, to a larger amount than the sum of five thousand dollars; and no trustee or officer of said Bank shall make or have any interest in any of the deposits of the said Bank, or the profits arising from the same, except it may be for deposits made by them as trustees for the benefit of others.

121 AN ACT

In Relation to Deposits by Banks for Savings. Passed December 15, 1847.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. It shall be lawful for the trustees of Banks for Savings, who are authorized to make temporary deposits in any of the incorporated banks, to make such deposits with any of the associations which are now, or may hereafter be formed under the general banking law.

122 § 2. This act shall take effect immediately.

Extract from By-Laws of Bank for Savings.

(*Sections* 3, 4, 6, 7, 8 *and* 9, *of Chapter* 4).

3. On making the first deposit the depositor shall be present and subscribe his or her name in the book of the Bank, as his or her agreement to these regulations "of the business of the Bank," a copy of which shall be printed on the pass-book; without which no deposit shall be received under any pretence whatever.

123 4. All deposits and all payments shall be entered at the time they are made, in the books of the Bank, and also in the pass-book of the depositor, who shall then examine the same. The pass-book shall be the voucher of the depositor, and the possession of the pass-book shall be sufficient authority to the Bank to warrant any payment made and entered in it; and the Bank shall not be liable or called on to make any payment without the presenting of the pass-book at its counter, that the proper entry may be made in it.

6. The Bank shall be at liberty to return all or any part of any deposit whenever they may think proper.

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7. All drafts must be made personally, or by order, in 124
writing, duly authenticated, when the signature is not known to the Accountant or Attending Committee, and must be accompanied by the pass-book.

8. The Bank shall not be liable to pay any moneys to depositors, except on a week's previous notice to the Accountant or Attending Committee at the Bank, nor except on the third Mondays in January, April, July, and October; but moneys may be voluntarily paid by the
Bank daily, and without such notice, and without thereby 125
waiving the right of the Bank to such notice and time of payment.

9. No draft shall be made for less than one dollar, nor for fractional parts of a dollar, unless it be for the whole amount remaining on deposit or for interest only.